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Report of the Committee against Torture

General Assembly
Official Records
Fifty-third session
Supplement No. 44 (A/53/44)

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Report of the Commit against Torture

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Chapter I
Organizational and other matters

A. States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. As at 22 May 1998, the closing date of the twentieth session of the Committee against Torture, there were 105 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. The States that have signed, ratified or acceded to the Convention is contained in annex I to the present report. The States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention are listed in annex II. The States parties have made the declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

2. The declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.5.

B. Opening and duration of the sessions of the Committee against Torture

3. The Committee against Torture held two sessions since the adoption of its report for 1997. The nineteenth and twentieth sessions of the Committee were held at the United Nations Office at Geneva from 10 to 21 November 1996 and from 4 to 22 May 1998.

4. At its nineteenth session the Committee held 19 meetings (299th to 317th meeting) and at its twentieth session it held 27 meetings (318th to 344th meeting). An account of the deliberations of the Committee at those sessions is contained in the relevant summary records (CAT/C/SR.299-344).

C. Membership and attendance

5. In accordance with article 17 of the Convention, the Sixth Meeting of States parties to the Convention was convened by the Secretary-General at the United Nations

Office at Geneva, on 26 November 1997. The following five members of the Committee were elected for a term of four years beginning on 1 January 1998: Mr. Sayed Kassem El Masry, Mr. António Silva Henriques Gaspar, Mr. Bent Sørensen, Mr. Alexander M. Yakovlev and Mr. Yu Mengjia.

6. In accordance with article 17, paragraph 6, of the Convention and rule 13 of the rules of procedure of the Committee, Mr. Georghios Pikis, by a letter dated 16 March 1998, informed the Secretary-General of his decision to cease his functions as a member of the Committee. By a note dated 19 March 1998, the Government of Cyprus informed the Secretary-General of its decision to appoint, subject to the tacit approval of half or more of the States parties, Mr. Andreas Mavrommatis to serve for the remainder of Mr. Pikis's term on the Committee, which will expire on 31 December 1999.

7. Since only one of the States parties to the Convention responded negatively within the six-week period after having been informed by the Secretary-General of the proposed appointment, the Secretary-General considered that the States parties had approved the appointment of Mr. Mavrommatis as a member of the Committee, in accordance with the above-mentioned provisions. The list of the members of the Committee in 1998, with their terms of office, appears in annex IV to the present report.

8. All the members attended the nineteenth and the twentieth session of the Committee.

D. Solemn declaration by the newly elected members of the Committee

9. At the 318th meeting, on 4 May 1998, the five members of the Committee who had been elected at the Sixth Meeting of States parties to the Convention made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

10. At the 322nd meeting, on 6 May 1998, the newly appointed member, Mr. Mavrommatis, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

11. At the 318th meeting, on 4 May 1998, the Committee elected the following officers for a term of two years in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

Chairman:	Mr. Peter Burns
Vice-Chairmen:	Mr. Guibril Camara Mr. Alezandro González Poblete Mr. Bostjan Zupančič
Rapporteur:	Mr. Bent Sørensen

F. Agendas

12. At its 299th meeting, on 10 November 1997, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/41), as the agenda of its nineteenth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.

13. At its 318th meeting, on 4 May 1998, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/45) as the agenda of its twentieth session and added a new item entitled "Amendments to the rules of procedure of the Committee". The agenda therefore was composed of the following items:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected members of the Committee.
3. Election of the officers of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.
6. Submission of reports by States parties under article 19 of the Convention.
7. Consideration of reports submitted by States parties under article 19 of the Convention.
8. Consideration of information received under article 20 of the Convention.
9. Consideration of communications under article 22 of the Convention.
10. Amendments to the rules of procedure of the Committee.
11. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.
12. Annual report of the Committee on its activities.

G. Question of a draft optional protocol to the Convention

Nineteenth session

14. At the 301st meeting, on 11 November 1997, Mr. Sørensen, who had been designated by the Committee as its observer in the inter-sessional open-ended working group of the Commission on Human Rights elaborating the protocol, informed the Committee on the progress made by the working group at its sixth session, held at the United Nations Office at Geneva from 13 to 24 October 1997.

Twentieth session

15. At its 328th meeting, on 11 May 1998, the Committee decided that Mr. Sørensen would continue to act as its observer in the working group of the Commission on Human Rights elaborating the draft optional protocol to the Convention.

H. Cooperation between the Committee, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, the Special Rapporteur of the Commission on Human Rights on questions relating to torture and the United Nations High Commissioner for Human Rights

16. A joint meeting was held, on 19 May 1998, between the Committee (340th meeting), the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur of the Commission on Human Rights on questions relating to torture. The United Nations High Commissioner for Human Rights participated in the meeting. The main topics discussed were: (a) the question of impunity of perpetrators of acts of torture; and (b) the training of law enforcement officials and medical personnel to respect the

right of each individual not to be tortured and to detect signs of torture.

17. The Committee took note with satisfaction of General Assembly resolution 52/149 of 12 December 1997, by which the Assembly decided to proclaim 26 June United Nations International Day in Support of Victims of Torture, with a view to the total eradication of torture and the effective functioning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18. The Committee, the Board of Trustees, the Special Rapporteur and the High Commissioner for Human Rights decided to issue a joint declaration for the United Nations International Day in Support of Victims of Torture. The text of the declaration appears in annex V to the present report.

I. Request for an extension of the sessions of the Committee

19. At its 344th meeting, on 22 May 1998, the Committee recalled that it had requested an additional week of meetings to the General Assembly since 1995 and that it had included that request in its annual reports to the General Assembly at its fiftieth[1] and fifty-second[2] sessions as well as in a letter that its Chairman addressed to the Secretary-General on the Committee's behalf on 8 August 1997.

20. The Committee took note with appreciation of the authorization granted by the Committee on Conferences to extend the twentieth session of the Committee by one additional week from 18 to 22 May 1998. However, it recalled that it had requested the Assembly to authorize the Secretary-General to extend its spring sessions by one additional week on a regular basis.

21. The Committee reiterated its concern over the lack of time available during its two annual regular meetings to cope with the great complexity of its work and the intensive pace of its operations resulting from the increase in the number of States parties to the Convention, the new cycle of periodic reports submitted by States parties, the increasing amount of information received under the inquiry procedure and the growing number of communications submitted under the individual communications procedure. The Committee therefore decided to request once again the General Assembly to authorize the Secretary-General to extend its spring sessions by one additional week on a regular basis, beginning with its twenty-second session in April/May 1999.

Chapter II

Effective implementation of international instruments on human rights, including reporting obligations under those instruments

Nineteenth session

22. The Committee took note of the report of the eighth meeting of persons chairing the human rights treaty bodies (A/52/507, annex). The Chairman of the Committee had participated in that meeting.

Twentieth session

23. The Committee had before it General Assembly resolution 52/118 of 12 December 1997 and Commission on Human Rights resolution 1998/27 of 17 April 1998.

24. The Committee took note of the above-mentioned resolutions. At the 320th and 339th meetings, held on 5 and 18 May 1998, Mr. Sørensen, who had participated in the ninth meeting of persons chairing the human rights treaty bodies held at the United Nations Office at Geneva from 25 to 27 February 1998, provided information on the main issues debated during that meeting as well as on its conclusions and recommendations. An advance, unedited copy of the report of that meeting was made available to the Committee.

25. As recommended by the meeting of Chairpersons, the Committee at its 339th meeting, on 18 May 1998, revised its general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14) by adding a third part, according to which States parties should provide information on measures they take to comply with the recommendations addressed to them by the Committee at the end of its consideration of their initial and periodic reports. The text of the revised guidelines appears in annex VI to the present report.

26. At its 339th meeting, on 18 May 1998, the Committee also decided to designate thematic rapporteurs who, on the basis of reports of States parties and other information available to them, would bring to the attention of the Committee issues related to women's rights, children's rights and discriminatory practices relevant to or affecting the implementation of the Convention. Mr. Burns, Mr. Sørensen

and Mr. Yakovlev were designated, respectively, as rapporteurs for each of the issues referred to above.

27. Furthermore, at its 342nd meeting, on 20 May 1998, the Committee discussed measures to improve the quality of its concluding observations. It acknowledged that it had experienced some difficulties in elaborating them immediately after the consideration of the report of the State party concerned. It decided that, starting from its next session, conclusions and recommendations at the end of the consideration of a State party report would normally be elaborated the day after that consideration and read out to the representatives of the reporting State two days after the consideration.

Chapter III
Submission of reports by States parties under article 19 of the Convention

Action taken by the Committee to ensure the submission of reports

28. The Committee, at its 299th, 318th and 330th meetings, held on 10 November 1997 and 4 and 12 May 1998, considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

(a) Notes by the Secretary-General concerning initial reports of States parties which were due from 1988 to 1998 (CAT/C/5, 7, 9, 12, 16/Rev.1, 21/Rev.1, 24, 28/Rev.1, 32/Rev.2, 37 and 42);

(b) Notes by the Secretary-General concerning second periodic reports which were due from 1992 to 1998 (CAT/C/17, 20/Rev.1, 25, 29, 33, 38 and 43);

(c) Notes by the Secretary-General concerning third periodic reports which were due from 1996 to 1998 (CAT/C/34, 39 and 44).

29. The Committee was informed that, in addition to the 16 reports that were scheduled for consideration by the Committee at its nineteenth and twentieth sessions (see paras. 38 and 39), the Secretary-General had received the initial reports of Iceland (CAT/C/37/Add.2) and Yugoslavia (CAT/C/16/Add.7), the second periodic reports of Croatia (CAT/C/33/Add.4) and Tunisia (CAT/C/33/Add.3) and the third periodic reports of Hungary (CAT/C/34/Add.10) and the United Kingdom of Great Britain and Northern Ireland (CAT/C/44/Add.1).

30. The Committee was also informed that the revised version of the initial report of Belize, which had been requested for 10 March 1994 by the Committee at its eleventh session, had not yet been received in spite of five reminders sent by the Secretary-General and a letter that the Chairman of the Committee addressed to the Minister for Foreign Affairs and Economic Development of Belize on 20 November 1995.

31. In addition, the Committee at its nineteenth and twentieth sessions, was informed about the reminders that had been sent by the Secretary-General to States parties whose reports were overdue. The situation with regard to overdue reports as at 22 May 1998 was as follows:

State party	*Date on which the report was due*	*Number of reminders*
	Initial reports	
Uganda	25 June 1988	15
Togo	17 December 1988	15
Guyana	17 June 1989	12
Brazil	27 October 1990	10
Guinea	8 November 1990	11
Somalia	22 February 1991	8
Venezuela	27 August 1992	7
Estonia	19 November 1992	7
Yemen	4 December 1992	7
Bosnia and Herzegovina	5 March 1993	6
Benin	10 April 1993	6
Latvia	13 May 1993	6
Seychelles	3 June 1993	6

State party	*Date on which the report was due*	*Number of reminders*
Cape Verde	3 July 1993	5
Cambodia	13 November 1993	5
Burundi	19 March 1994	4
Slovakia	27 May 1994	4
Slovenia	14 August 1994	4
Antigua and Barbuda	17 August 1994	4
Costa Rica	10 December 1994	4
Ethiopia	12 April 1995	3
Albania	9 June 1995	3
United States of America	19 November 1995	2
Chad	9 July 1996	1
Uzbekistan	27 October 1996	1
Republic of Moldova	27 December 1996	1
Côte d'Ivoire	16 January 1997	1
Lithuania	1 March 1997	—
Democratic Republic of the Congo	16 April 1997	—
Malawi	10 July 1997	—
El Salvador	16 July 1997	—
Azerbaijan	14 September 1997	—
Honduras	3 January 1998	—
Kenya	22 March 1998	—
	Second periodic reports	
Afghanistan	25 June 1992	8
Belize	25 June 1992	8
Bulgaria	25 June 1992	8
Cameroon	25 June 1992	8
Philippines	25 June 1992	8
Uganda	25 June 1992	7
Austria	27 August 1992	8
Luxembourg	28 October 1992	8
Togo	17 December 1992	7
Guyana	17 June 1993	6
Turkey	31 August 1993	6
Australia	6 September 1994	4
Brazil	27 October 1994	4
Guinea	8 November 1994	4
Somalia	22 February 1995	2
Malta	12 October 1995	2
Liechtenstein	1 December 1995	2
Romania	16 January 1996	1
Nepal	12 June 1996	1
Venezuela	27 August 1996	1
Yugoslavia	9 October 1996	1
Estonia	19 November 1996	1
Yemen	4 December 1996	1
Jordan	12 December 1996	1

State party	*Date on which the report was due*	*Number of reminders*
Monaco	4 January 1997	1
Bosnia and Herzegovina	5 March 1997	—
Benin	10 April 1997	—
Latvia	13 May 1997	—
Seychelles	3 June 1997	—
Cape Verde	3 July 1997	—
Cambodia	13 November 1997	—
Czech Republic	31 December 1997	—
Mauritius	7 January 1998	—
Burundi	19 March 1998	—
	Third periodic reports	
Afghanistan	25 June 1996	1
Belarus	25 June 1996	1
Belize	25 June 1996	1
Bulgaria	25 June 1996	1
Cameroon	25 June 1996	1
Egypt	25 June 1996	1
France	25 June 1996	1
Hungary	25 June 1996	1
Philippines	25 June 1996	1
Russian Federation	25 June 1996	1
Senegal	25 June 1996	1
Uganda	25 June 1996	1
Uruguay	25 June 1996	1
Canada	23 July 1996	1
Austria	27 August 1996	1
Luxembourg	28 October 1996	1
Togo	17 December 1996	1
Colombia	6 January 1997	1
Ecuador	28 April 1997	—
Guyana	17 June 1997	—
Peru	5 August 1997	—
Turkey	31 August 1997	—
Tunisia	22 October 1997	—
Chile	29 October 1997	—
China	2 November 1997	—
Greece	4 November 1997	—
United Kingdom	6 January 1998	—
Netherlands	19 January 1998	—
Italy	10 February 1998	—
Portugal	10 March 1998	—

32. The Committee expressed concern at the number of States parties that did not comply with their reporting obligations. With regard, in particular, to States parties whose reports were more than five years overdue, the Committee deplored the fact that, in spite of several reminders sent by the Secretary-General and letters or other messages of its Chairman to their respective Ministers for Foreign Affairs, those States parties continued not to comply with the obligations they had freely assumed under the Convention. The Committee noted that the following States parties had failed to comply for more than five years with their obligation to submit their initial reports: Benin, Bosnia and Herzegovina, Brazil, Estonia, Guinea, Guyana, Latvia, Somalia, Togo, Uganda, Venezuela and Yemen. In addition, second periodic reports from the following States parties were more than five years overdue: Afghanistan, Austria, Belize, Bulgaria, Cameroon, Luxembourg, Philippines, Togo and Uganda. The Committee stressed that it had the duty to monitor the Convention and that the non-compliance of a State party with its reporting obligations constituted an infringement of the provisions of the convention. In this connection, the Committee decided to continue its practice of making available lists of States parties whose reports are overdue during the press conferences that the Committee usually hold at the end of each session.

33. The Committee again requested the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue and subsequent reminders every six months.

34. The Committee also envisaged the possibility that information that it may receive from United Nations, non-governmental organizations and other sources on the implementation of the Convention in States parties whose reports were long overdue be sent to those non-reporting States requesting them to give their views on that information.

35. The status of submission of reports by States parties under article 19 of the Convention as at 22 May 1998, the closing date of the twentieth session of the Committee, appears in annex VII to the present report.

Chapter IV

Consideration of reports submitted by States parties under article 19 of the Convention

36. At its nineteenth and twentieth sessions, the Committee considered reports submitted by 16 States parties, under article 19, paragraph 1, of the Convention. At its nineteenth session, the Committee devoted 13 of the 19 meetings held to the consideration of reports (see CAT/C/SR.301-312 and 314). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its nineteenth session:

Cyprus (second periodic report)	CAT/C/33/Add.1
Argentina (third periodic report)	CAT/C/34/Add.5
Portugal (second periodic report)	CAT/C/25/Add.10
Switzerland (third periodic report)	CAT/C/34/Add.6
Cuba (initial report)	CAT/C/32/Add.2
Spain (third periodic report)	CAT/C/34/Add.7

37. At its twentieth session, the Committee devoted 20 of the 27 meetings held to the consideration of reports submitted by States parties (see CAT/C/SR.320-339). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its twentieth session:

France (second periodic report)	CAT/C/17/Add.18
Norway (third periodic report)	CAT/C/34/Add.8
Guatemala (second periodic report)	CAT/C/29/Add.3
New Zealand (second periodic report)	CAT/C/29/Add.4
Germany (second periodic report)	CAT/C/29/Add.2
Peru (second periodic report)	CAT/C/20/Add.6
Panama (third periodic report)	CAT/C/34/Add.9
Kuwait (initial report)	CAT/C/37/Add.1
Sri Lanka (initial report)	CAT/C/28/Add.3
Israel (second periodic report)	CAT/C/33/Add.3

38. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

39. In accordance with the decision taken by the Committee at its fourth session,[3] country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the

secretariat, for each of the reports submitted by States parties and considered by the Committee at its seventeenth and eighteenth sessions. The list of those reports and the names of the country rapporteurs and their alternates for each of them appear in annex VIII to the present report.

40. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.5);

(b) General guidelines regarding the form and content of initial reports to be submitted by States parties under article 19 of the Convention (CAT/C/4/Rev.2);

(c) General guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14).

41. In accordance with the decision taken by the Committee at its eleventh session,[4] the following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the States parties' reports considered at its nineteenth and twentieth sessions.

A. Cyprus

42. The Committee considered the second periodic report of Cyprus (CAT/C/33/Add.1) at its 301st and 302nd meetings, on 11 November 1997 (CAT/C/SR.301 and 302), and adopted the following conclusions and recommendations.

1. Introduction

43. The second periodic report of Cyprus was received in timely fashion and complied with the general guidelines for periodic reports (CAT/C/14) adopted by the Committee.

44. The oral presentation by the delegation complemented the written report, informing the Committee of the most recent developments in Cyprus. The ensuing discussion was open and fruitful.

2. Positive aspects

45. The Committee endorses the conclusions it found in this respect at the time of its consideration of the initial report and welcomes the legislative initiatives concerning mental health, the proposed creation of a National Institution for the Promotion and Protection of Human Rights and reform of the law of evidence.

46. Moreover, the Committee acknowledges the activities of the Ombudsman and the response of the Council of Ministers to established cases of police violence.

47. The Committee especially welcomes the way in which the Convention has been incorporated into the domestic law of Cyprus, in particular the Convention definition of "torture" itself.

3. Factors and difficulties impeding the application of the provisions of the Convention

48. As stated in the Committee's views on the initial report, there appears to be no structural impediment to the implementation of the Convention in Cyprus.

4. Subjects of concern

49. A few cases of casual violence by police officers continue to be reported, emphasizing the continuous need for programmes of education and vigorous legal response to such instances.

50. The fact that a victim is unable or unwilling to give evidence should not be a reason for non-prosecution where the case can otherwise be made.

5. Recommendations

51. The legal and administrative constructs in Cyprus are excellent; in implementing them the Committee advocates a strong programme of re-education directed to field law enforcement personnel that emphasizes the policy of the Government to honour its commitment to human rights.

B. Argentina

52. The Committee considered the third periodic report of Argentina (CAT/C/34/Add.5) at its 303rd, 304th and 306th meetings, on 12 and 13 November 1997 (CAT/C/SR.303, 304 and 306), and adopted the following conclusions and recommendations.

1. Introduction

53. Argentina ratified the Convention without reservation on 24 September 1986 and, on the same date, made the declarations provided for in articles 21 and 22.

54. Like its two predecessors, the third report was submitted within the time limits provided for in article 19 of the Convention and was drafted in accordance with the Committee's general guidelines regarding the form and content of periodic reports. The information it contains was supplemented and updated orally by the representative of the State party at the beginning of the Committee's consideration of the report.

2. Positive aspects

55. The text of article 75, paragraph 22, of the Constitution of Argentina, added as part of the 1994 constitutional reform, bestows constitutional rank on the various international human rights treaties and conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and also provides that they should be interpreted as complementary to the rights and guarantees recognized in the first part of the Constitution.

56. Another welcome development is Argentina's ratification of the Inter-American Convention on the Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Those two international instruments contain provisions and lay down obligations whose observance will contribute to the prevention and punishment of torture and the compensation of victims.

57. The bilateral treaties on extradition and judicial assistance recently concluded by the State party contain provisions consistent with article 8 of the Convention.

58. The new Code of Criminal Procedure, which entered into force during the period covered by the report, contains provisions whose implementation should help to prevent the practice of torture. Especially important for the achievement of that goal are the provisions prohibiting the police from taking a statement from a person who has been charged; strictly limiting cases in which the police may detain persons without a court order and obliging them to bring the detainee before the competent judicial authority immediately or within six hours; limiting the length of incommunicado detention; and stipulating that the fact that an individual is being held incommunicado may under no circumstances prevent him from communicating with his defence counsel before making any statement or before any proceeding requiring his personal participation.

59. The creation of the Office of Government Procurator for the Prison System as a mechanism to monitor respect for the human rights of persons being held in prisons administered by the federal prison service, with the power to receive and investigate complaints and claims, to make recommendations to the competent authorities and to initiate criminal complaints, introduces an external supervisory procedure into an environment which, as the facts have shown, lends itself particularly to abuse, victimization and torture of persons in a vulnerable and unprotected situation.

3. Factors and difficulties impeding the application of the provisions of the Convention

60. The severe penalties laid down in article 144 *ter* of the Penal Code for acts of torture, particularly torture resulting in the death of the victim, although formally satisfying the requirements of article 4 of the Convention, are weakened in their practical application by the courts, which, as the Committee has noted in its consideration of a large number of cases, often prefer to try the offenders on less serious charges attracting lighter penalties, thus reducing the deterrent effect. The Committee notes that, while there have been many cases of death resulting from torture since the entry into force of the reform of the Penal Code, which introduced this penal provision, in only six cases have the culprits been sentenced to life imprisonment, which the law prescribes as the only penalty.

61. The protracted nature of judicial inquiries into complaints of torture nullifies the exemplary and deterrent effect which prosecution of the perpetrators of such crimes should have. The report refers to cases of torture resulting in death, or of torture aggravated by the clandestine disposal of the victims' remains, where investigations have still not been completed, six or seven years after the events. Such slow procedures intensify the suffering of relatives, inducing them to give up their legitimate demands for the punishment of the guilty parties and delaying the moral and material redress to which they are entitled.

4. Subjects of concern

62. The Committee notes a discrepancy between the body of legislation adopted by the State for the prevention and punishment of the practice of torture, which contains provisions that qualitatively and quantitatively meet the requirements of the Convention, and the actual situation as revealed by the information which continues to be received on instances of torture and ill-treatment by police and prison staff both in the provinces and in the federal capital; this seems to indicate a failure to take effective action to eliminate these reprehensible practices.

63. The information received by the Committee on a number of cases of torture is indicative not only of a lack of effective and prompt police cooperation in judicial inquiries into complaints of torture and ill-treatment, but also of impediments to those inquiries denoting a relatively systematic modus operandi, rather than occasional failure to cooperate faithfully with the inquiries.

64. The Committee is also concerned about information brought to its attention showing an increase in the number and gravity of instances of police brutality, many of which result in the death of or serious injury to the victim and which, while not constituting torture as defined in article 1 of the Convention, represent cruel, inhuman and degrading treatment which the State party is obligated to punish, under article 16 of the Convention.

65. The Committee is also concerned about the fact that, despite the mandatory limitations on the situations in which the police can make arrests without a court order, the provisions for the protection of the safety of citizens are infringed by the application of lesser rules or provisions such as police regulations concerning misdemeanours and arrests for identity checks. According to the information provided to the Committee, the arrests made under such provisions represent a large proportion of the cases of police detention and only a minimal proportion of the arrests were authorized by court order.

5. Recommendations

66. The Committee recalls that, during its consideration of the preceding report, it had informed the representatives of the State party that it would like future information on compliance with the obligations arising from the Convention to be representative of the situation throughout the country. At that time, the State party pointed out that a register of cases of illegal detention and ill-treatment had been established in the Office of the Attorney-General to be used, according to the delegation, to record information from all courts throughout the country and provide data enabling action for the prevention and punishment of such illegal acts to be made more effective, thus bringing the general situation under tighter control. The Committee has recently learned that the register has been done away with and notes that the report suffers from the shortcoming already observed, namely, that it does not adequately reflect the situation throughout the country. The Committee calls upon the authorities of the State party to take all necessary measures to remedy that deficiency.

67. Also during its consideration of the previous report, the Committee was informed of a decision by the Attorney General in October 1991 instructing prosecutors in appeal courts to urge prosecutors in criminal courts of first instance to comply faithfully with their obligations, with particular emphasis on the exercise of their functions in order to exhaust all avenues of inquiry and all means of obtaining evidence during the investigation of the unlawful acts characterized in articles 144, 144 *bis* and 144 *ter* of the Penal Code. The Committee notes that, seven years after that decision was taken, investigations into illegal acts proceed at the same slow pace and with the same inefficiency that prompted the decision in the first place. It calls upon the competent authorities of the State party to monitor closely the way in which State law enforcement bodies and officials comply with their obligations, particularly regarding the offences characterized in the above-mentioned provisions of the Penal Code.

68. The Committee calls upon the competent authorities of the State party to revise criminal procedure legislation by setting a reasonable time limit for preliminary investigations since, although article 207 of the Code of Criminal Procedure sets a time limit of four months, the unlimited extension provided for in the last paragraph of that article as a special measure appears to be the general rule. In the view of the Committee, the undue prolongation of this pre-trial stage represents a form of cruel treatment of the individual concerned, even if he is not deprived of his freedom. The law should also specify a reasonable time limit for pre-trial detention and for the completion of criminal proceedings.

69. The Committee requests the State party to provide it with early replies to those questions raised during the consideration of the report to which no answers or only partial or inadequate answers were given. It also calls upon the State party to provide it with information on the performance of the obligations arising from the Convention which are representative of the situation throughout the country, as soon as that information becomes available and without waiting for the submission of the next periodic report.

C. Portugal

70. The Committee considered the second periodic report of Portugal (CAT/C/25/Add.10) at its 305th and 306th meetings, on 13 November 1997 (CAT/C/SR.305 and 306), and adopted the following conclusions and recommendations:

1. Introduction

71. The Committee notes with satisfaction that the report of Portugal conforms to the general guidelines regarding the presentation of periodic reports. It expresses its great satisfaction at the full, detailed and frank nature of the report.

72. The Committee listened with the greatest interest to the oral statement and explanations and clarifications from the delegation of Portugal, which displayed a real willingness to enter into dialogue and great professionalism.

2. Positive aspects

73. The Committee expresses its gratification at the State party's impressive efforts in the legislative and institutional spheres to bring its legislation into line with the obligations resulting from its accession to the Convention.

74. The Committee particularly appreciates the following innovations:

(a) The adoption of a new Penal Code containing a definition of torture;

(b) The opening of certain courts on Saturdays, Sundays and public holidays so that arrested persons can be brought before them without delay;

(c) The adoption of the Physicians' Code of Ethics;

(d) The establishment of criminal sanctions for officials who fail to report acts of torture within three days of learning of them;

(e) The adoption of the rule *aut dedere, aut judicare*;

(f) The adoption and implementation of an extensive programme for education in the sphere of human rights in general and in that of the prevention of torture in particular;

(g) The establishment of the office of Provedor de Justiça and of the Inspeccão-Geral da Administracão Interna and, in particular, the powers vested in those institutions;

(h) The recognition of the right of victims of torture and similar acts to compensation, as well as the general system for the compensation of victims of offences;

(i) The provisions of article 32, paragraph 6, of the Constitution invalidating evidence obtained by torture;

(j) The revision of the Constitution, especially the ending of the status of military courts as special courts.

3. Factors and difficulties impeding the application of the provisions of the Convention

75. The Committee observes that there are no particular factors or difficulties impeding the application of the provisions of the Convention in Portugal.

4. Subjects of concern

76. The Committee is seriously concerned about the recent cases of ill-treatment, torture and, in some instances, suspicious death attributed to members of the forces of law and order, especially the police, as well as the apparent lack of any appropriate response by the competent authorities.

77. The rules on extradition and deportation are not conducive to full observance by the State party of the Convention, especially article 3 thereof.

5. Recommendations

78. The State party should revise its practice regarding the protection of human rights so as to make the rights and freedoms recognized in Portuguese law more effective, and to narrow or even eliminate the gap between the law and its implementation. To that end it should devote the greatest possible attention to the handling of files concerning accusations of violence made against public officials, with a view to initiating investigations and, in proven cases, applying appropriate penalties.

79. Even though the principle of due process applies in Portugal, the legislation should be clarified in order to remove any doubts concerning the obligation on the part of the competent authorities to initiate investigations of their own accord and systematically in all cases where there are reasonable grounds for believing that an act of torture has been committed on any territory within their jurisdiction.

D. Switzerland

80. The Committee considered the third periodic report of Switzerland (CAT/C/34/Add.6) at its 307th and 308th meetings, on 14 November 1997 (CAT/C/SR.307 and 308), and adopted the following conclusions and recommendations.

1. Introduction

81. The Committee against Torture expresses appreciation to the State party for its third periodic report, which was submitted within the time limit, and is drafted in accordance with the Committee's guidelines regarding periodic reports.

82. The Committee is satisfied with the clarifications and the clear and detailed replies provided by the delegation which made it possible to conduct a fruitful and constructive dialogue.

2. Positive aspects

83. The Committee notes with satisfaction that no governmental or non-governmental body has confirmed the existence of cases of torture in the terms of article 1 of the Convention.

84. The Committee notes with satisfaction that a provision has entered into force prohibiting racial discrimination.

85. The Committee welcomes the fact that, on 21 December 1994, the Swiss Parliament adopted a provision concerning cooperation with international tribunals under which Switzerland undertook to respond to requests for the arrest and transfer of persons accused of serious violations of humanitarian law in the former Yugoslavia and in Rwanda.

86. The Committee welcomes the revision of a number of provisions of the codes of criminal procedure in various cantons, to strengthen the rights of the defence and the rights of persons in pre-trial detention.

87. The Committee also welcomes the fact that a 24-hour medical service attached to the police and run by the Geneva University Institute of Forensic Medicine has been in operation since 15 October 1992.

88. Lastly, the Committee welcomes the financial support that Switzerland has been providing for a number of years to the United Nations Voluntary Fund for Victims of Torture and to non-governmental organizations (NGOs) operating in various countries throughout the world.

3. Factors and difficulties impeding the application of the provisions of the Convention

89. The Committee observes that the lack of an appropriate and specific definition of torture makes the full application of the Convention difficult.

4. Subjects of concern

90. The Committee is concerned about frequent allegations of ill-treatment in the course of arrests or in police custody, particularly in respect of foreign nationals. Independent machinery for recording and following up complaints of ill-treatment does not seem to exist in all the cantons. The Committee is seriously concerned at the lack of an appropriate response on the part of the competent authorities.

91. The Committee regrets the non-existence in some cantons of legal guarantees, such as the possibility for a detainee to contact a family member or lawyer immediately after his or her arrest and to be examined by an independent doctor at the commencement of police custody or when he or she is brought before an examining magistrate.

92. The Committee is concerned about the non-existence of a suspect's right to remain silent.

93. The Committee is concerned about allegations made by non-governmental organizations that, during the expulsion of certain aliens, doctors have engaged in medical treatment of those persons without their consent.

5. Recommendations

94. The Committee recommends that machinery should be set up in all cantons to receive complaints against members of the police regarding ill-treatment during arrest, questioning and police custody.

95. The Committee recommends harmonization of the various cantonal laws governing criminal procedure, especially as regards fundamental guarantees during police custody or when persons are held incommunicado.

96. The Committee emphasizes the need to allow suspects to contact a lawyer or family member or friend and to be examined by an independent doctor immediately upon their arrest, or after each session of questioning, and before they are brought before an examining magistrate or released.

97. The Committee recommends that an explicit definition of torture should be included in the Criminal Code.

98. The Committee recommends to the State party that it should devote the greatest possible attention to the handling of files concerning accusations of violence made against public officials with a view to the opening of investigations and, in proven cases, the application of appropriate penalties.

99. The Committee recommends the adoption of legislative measures granting suspects the right to remain silent.

100. Lastly, the Committee recommends that the authorities should investigate the allegations of medical treatment carried out on persons who are being expelled, without their consent.

E. Cuba

101. The Committee considered the initial report of Cuba (CAT/C/32/Add.2) at its 309th, 310th, 312th and 314th meetings, on 17, 18 and 19 November 1997 (CAT/C/SR.309,

310/Add.1, 312 and 314), and adopted the following conclusions and recommendations.

1. Introduction

102. The report was submitted on 15 November 1996, nearly within the time limit envisaged by the Convention on the submission of the initial report by the parties following their accession to the Convention.

103. The Committee expresses its appreciation to the representatives of Cuba on the presentation of their report and the efforts made to answer most of the many questions raised by the rapporteur, the co-rapporteur and the members of the Committee.

2. Positive aspects

104. The Cuban Constitution commits the State to upholding the dignity of the individual and safeguards the inviolability of the person and his/her home.

105. Cuba acknowledges the universal jurisdiction for the trial of crimes against humanity, to which category, many would argue, torture belongs.

106. The provision of the Cuban labour code that persons acquitted of criminal offences are entitled to compensation for any period in which they were deprived of their liberty as a result of pre-trial detention is a salutary one.

107. The constitutional prohibition of the use of violence or pressure "against people to force them to testify" associated with the declaration that statements obtained in breach of this principle are null and void and the holding of those responsible for such violations as liable to punishment is a most welcome one.

108. The Committee welcomes the criminalization of every form of complicity in crimes against humanity, human dignity and offences laid down in international treaties.

3. Factors and difficulties impeding the application of the Convention

109. The deteriorating economic conditions attributable, *inter alia*, to the embargo in force make it difficult for the State party to provide appropriate nutrition and essential medical supplies to prisoners.

4. Subjects of concern

110. The failure to establish a specific crime of torture as required by the Convention leaves a gap in the application of its provisions that is not filled by any of the existing offences directed against violations of the bodily integrity or the dignity of the individual. Moreover, the absence of the specific offence of torture renders difficult the monitoring of the application of the Convention.

111. The report of the Special Rapporteur appointed by the Commission on Human Rights on the situation of human rights in Cuba is a matter of great concern to the Committee. Reports of NGOs raise similar concerns, a fact that intensifies our concern. The information disclosed in the above reports suggests that there occur serious violations of the Convention with regard to arrest, detention, prosecution, access to counsel and imprisonment of individuals, especially persons referred to in the reports as dissidents, and that serious violations occur in prisons affecting the safety, dignity and health of prisoners.

112. The failure of the Cuban authorities to make a response to allegations made in the above reports is an additional subject of concern.

113. Certain nebulous offences, namely "disrespect", "resisting authority" and "enemy propaganda", arouse the concern of the Committee because of the uncertainty of their constituent elements and the room they provide for misuse and abuse.

114. Certain types of punishment primarily directed at the limitation of the liberty of citizens, i.e. internal exile and confinement at home, are matters of great concern to the Committee.

115. The absence of specific training in the norms of the Convention for law enforcement personnel, of civil and military, medical personnel and personnel generally involved in the arrest, custody, interrogation, detention and imprisonment of individuals is a matter of concern, more serious still in view of the absence of the stipulation of the specific crime of torture.

116. The absence of adequate information about the investigation of complaints of torture and other inhuman and degrading treatment and the outcome of any such investigations is cause for concern. In the absence of such information, the Committee cannot make a proper assessment as to whether there is compliance on the part of the State party with the provisions of article 12 of the Convention. Our concerns in these areas are enhanced because of the many complaints made that certain categories of persons referred to in the reports as dissidents are targeted and their fundamental rights violated without having satisfactory means of redress.

117. The Committee is concerned about the absence of satisfactory information as to the rights of victims of torture

and other inhuman and degrading treatment to seek redress including satisfactory compensation.

5. Recommendations

118. The Committee recommends that the following actions be taken by the State Party:

(a) The criminalization of torture, as defined in the Convention, by the creation of a specific crime or crimes giving effect to every aspect of it;

(b) The establishment of a transparent permanent procedure for receiving complaints about torture and other inhuman and degrading treatment or punishment, the prompt examination of such complaints and bringing to justice those responsible;

(c) The incorporation into the law of the right of the suspect or detainee to silence at all stages of investigation;

(d) The establishment of a system of recurrent review of prisons as required by article 11 of the Convention with a view to improving conditions in prisons;

(e) Revision of the rules to the organization of the judicial system in accordance with international instruments on the subject, namely the United Nations guidelines on the independence of the judiciary;

(f) The setting up of a comprehensive programme, which should be kept under constant review, for educating and training law enforcement personnel, medical personnel, public officials and all those involved in the interrogation, custody or treatment of any person arrested, detained or imprisoned;

(g) The establishment of a central register containing adequate statistical data about complaints of torture and other inhuman or degrading treatment or punishment, investigation of such complaints, the time within which the investigation is conducted and any prosecution mounted thereafter and its outcome;

(h) The establishment of a compensation fund for the compensation of the victims of torture and other prohibited treatment;

(i) Allowing into the country human rights NGOs and cooperating with them in the identification of cases of torture and other inhuman and degrading treatment;

(j) Urgently addressing complaints about torture and other cruel, inhuman or degrading treatment or punishment raised in NGO reports and the reports of the Special Rapporteurs; taking such action as the obligations of the State party under the Convention warrant; and reporting to the Committee the outcome of such investigations and any action taken in the next periodic report.

F. Spain

119. The Committee considered the third periodic report of Spain (CAT/C/34/Add.7) at its 311th, 312th and 313th meetings, on 18 and 19 November 1997 (CAT/C/SR.311, 312 and 313), and adopted the following conclusions and recommendations.

1. Introduction

120. Spain ratified the Convention against Torture on 10 October 1987 and made the declarations under articles 21 and 22 of the Convention. Spain has also been a party to the European Convention for the Prevention of Torture since 1989.

121. The third periodic report was submitted within the time limit and was prepared in accordance with the Committee's guidelines regarding the form and content of periodic reports.

122. The Committee welcomes the presence of a large and qualified delegation to present the report as an indication of the Spanish Government's desire to cooperate with the Committee in the discharge of the functions entrusted to it under the Convention and thanks the State party for its explicit recognition of the work of the Committee.

123. The Committee welcomes with satisfaction the very detailed report, which was amplified and updated orally, and the additional information provided by the delegation in replying to questions and comments in the course of a frank and constructive dialogue.

2. Positive aspects

124. Spain has incorporated the offence of torture and other cruel, inhuman, or degrading treatment or punishment into its domestic legislation in terms which not only conform to the definition in article 1 of the Convention, but also expand on it in certain important respects, thus providing its citizens with greater protection against such unlawful acts; the penalties laid down in the new legislation are commensurate with the gravity of the offences, as prescribed in article 4 of the Convention.

125. The Committee stresses the special importance of the final abolition of the death penalty.

126. In addition to the special legal provisions, the provisions of the Penal Code strengthen protection against

torture, especially the provisions of the chapter on acts by State officials which infringe constitutional guarantees. The Committee is confident that the faithful and strict observance of these provisions will have the desired preventive and deterrent effects.

3. Factors and difficulties impeding the application of the Convention

127. According to information provided to the Committee, judicial proceedings instituted following complaints of acts of torture, at both the pre-trial and trial stages, are often of a duration which is completely incompatible with the promptness required by article 13 of the Convention. The Committee has heard of cases in which sentences were pronounced up to 15 years after the events in question.

128. The sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture. The Committee is confident that the severity of the penalties, which has been increased in the new legislation, will help to remedy this shortcoming.

4. Subjects of concern

129. The Committee continued to receive frequent complaints of acts of torture and ill-treatment during the period covered by the report.

130. The Committee also received information of many cases of ill-treatment which appear to constitute manifestations of racial discrimination.

131. Notwithstanding the legal guarantees as to the conditions under which it can be imposed, there are cases of prolonged detention incommunicado, when the detainee cannot receive the assistance of a lawyer of his choice, which seems to facilitate the practice of torture. Most of these complaints concern torture inflicted during such periods.

132. The Committee is also concerned about reports that although, in accordance with article 15 of the Convention, judges do not accept as incriminating evidence statements regarded as invalid because they have been obtained under duress or torture, they nevertheless accept those same statements as incriminating other co-defendants.

5. Recommendations

133. The competent authorities should take the necessary measures to eliminate problems related to the excessive length of investigations into complaints of torture and ill-treatment.

134. State officials or agents responsible for conducting criminal proceedings on behalf of the State and society should use all available procedural means for the effective and exemplary punishment of acts of torture, rather than leave that responsibility to be discharged solely through the actions of those who have suffered direct and personal injury.

135. Consideration should be given to eliminating instances in which extended detention incommunicado and restrictions of the rights of detainees to be assisted by a defence lawyer of their choice are authorized.

136. The Committee calls upon the authorities of the State party to institute procedures for the automatic investigation of any case of torture or ill-treatment brought to their attention by any means whatsoever, even when the victims do not lodge complaints through the prescribed legal channels.

G. France

137. The Committee considered the second periodic report of France (CAT/C/17/Add.18) at its 320th, 321st and 322nd meetings, on 6 May 1998 (CAT/C/SR.320, 321 and 322), and adopted the following conclusions and recommendations.

1. Introduction

138. The Committee is gratified to note that the second periodic report of France complies with the general guidelines for periodic reports (CAT/C/14), although it was submitted some six years late.

139. The Committee listened with great interest to the oral presentation which, like the report, revealed the efforts of the State party to be honest, specific and comprehensive, and to the explanations and clarifications furnished by the French delegation, which displayed a clear desire for constructive dialogue and a solid professionalism.

140. The Committee is particularly gratified at the fact that the composition and size of the delegation clearly demonstrated France's interest in the work of the Committee.

2. Positive aspects

141. The Committee was pleased to note the following positive aspects:

(a) The manifest determination of the French Government to combat torture, shown in particular in certain provisions of the new Criminal Code, for example, articles 221-1, 222-1 and 432-4 to 432-6;

(b) The numerous projected improvements to legislation and current practice, such as the creation of a supreme ethics council; the drafting of a practical ethics handbook for use by the police forces; the guidelines on prison monitoring; the reactivation of the supreme prison administration council; the principle that a lawyer should be present from the outset of custody for most offences; and the curtailment of the duration of pre-trial detention;

(c) The announcement of a further contribution to the United Nations Voluntary Fund for Victims of Torture.

3. Factors and difficulties impeding the application of the provisions of the Convention

142. The Committee notes that there are no particular impediments to the implementation of the Convention in France.

4. Subjects of concern

143. The Committee is concerned about the following:

(a) The absence, in French positive law, of a definition of torture which conforms fully with article 1 of the Convention;

(b) The system of "appropriateness of prosecution", leaving public prosecutors free to decide not to prosecute perpetrators of acts of torture, or even to order an inquiry, which is clearly in conflict with the provisions of article 12 of the Convention;

(c) That aspect of the procedure for taking evidence under which the courts are not explicitly prohibited from admitting evidence obtained under torture, which contravenes article 15 of the Convention;

(d) The practice whereby the police hand over individuals to their counterparts in another country, despite the fact that a French court has declared such practices to be illegal; this is contrary to the duties of the State party under article 3 of the Convention;

(e) Sporadic allegations of violence committed by members of the police and gendarmerie at the time of arrest of suspects and during questioning.

5. Recommendations

144. The State party should consider incorporating into its criminal law a definition of torture which conforms with article 1 of the Convention.

145. The State party should pay greater attention to the provisions of article 3 of the Convention, which applies equally to expulsion, *refoulement* and extradition and, as demanded by a number of non-governmental organizations and as proposed by the National Advisory Committee on Human Rights, the possibility should exist of lodging a suspensive appeal against a refusal to allow entry into France and subsequent *refoulement*.

146. The State party should pay maximum attention to allegations of violence by members of the police forces, with a view to instigating impartial inquiries and, in proven cases, applying appropriate penalties.

147. In this connection, and in the interest of conforming with the letter and spirit of article 12 of the Convention, the State party should consider abrogating the current system of "appropriateness of prosecution" in order to remove all doubt regarding the obligation of the competent authorities to institute systematically and on their own initiative impartial inquiries in all cases where there are reasonable grounds for believing that an act of torture has been committed anywhere within the territory under their jurisdiction.

148. The State party is invited to submit its third periodic report as soon as possible in order to adhere to the schedule for the submission of reports laid down in the Convention.

H. Norway

149. The Committee considered the third periodic report of Norway (CAT/C/34/Add.8) at its 322nd and 323rd meetings, held on 6 May 1998 (CAT/C/SR.322 and 323), and adopted the following conclusions and recommendations.

1. Introduction

150. The third periodic report of Norway was submitted on 6 February 1997. It conformed fully with the requirements laid down in the Committee's reporting guidelines. It provided information, article by article, on new measures to implement the Convention taken since the submission of its last report and answered questions raised during the discussion of the second periodic report. The Committee also thanks the delegation for its oral information and its frank and precise replies to the questions raised by members of the Committee.

2. Positive aspects

151. Norway continues to do its utmost to secure respect for human rights, including the prohibition of torture, in law and in practice, *inter alia*, with the creation and constant development of special bodies such as Special Investigation Bodies.

152. Norway has made a generous donation to the United Nations Voluntary Fund for the Victims of Torture.

3. Subjects of concern

153. The Committee is concerned over the fact that Norway has not yet introduced the offence of torture into its penal system, including a definition of torture in conformity with article 1 of the Convention.

154. The Committee is concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention.

4. Recommendations

155. The Committee reiterates the recommendation it made during its consideration of the initial and second periodic report of Norway, that the State party should incorporate into its domestic law provisions on the crime of torture, in conformity with article 1 of the Convention.

156. Except in exceptional circumstances, *inter alia*, when the safety of persons or property is involved, the Committee recommends that the use of solitary confinement should be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law and that judicial supervision should be strengthened.

I. Guatemala

157. The Committee considered the second periodic report of Guatemala (CAT/C/29/Add.3) at its 324th and 325th meetings, on 7 May 1998 (CAT/C/SR.324 and 325), and adopted the following conclusions and recommendations.

1. Introduction

158. Guatemala acceded to the Convention on 5 January 1990. It has not submitted the declarations provided for under articles 21 and 22 of the Convention.

159. Guatemala is also a State party to the Inter-American Convention to Prevent and Punish Torture.

160. The report was submitted on 17 February 1997 and covers the period between 31 July 1995, when the first report was submitted, and 30 August 1996. During the Committee's consideration of the report, the Guatemalan delegation gave updated information in its oral presentation and submitted an addendum containing information covering the period between 1 January 1997 and 31 March 1998.

161. The Committee's work was complicated by the fact that the report does not adhere to the general guidelines adopted by the Committee on the form and content of periodic reports, which stipulated that reports should follow the order of the articles of the Convention (arts. 1 to 16).

2. Positive aspects

162. The Committee is pleased to note the following positive aspects:

(a) The Agreement on a Firm and Lasting Peace, signed on 29 December 1996, which ended the prolonged armed conflict;

(b) The elimination of all State-promoted policies that violate human rights;

(c) The stated wish of the State authorities to promote a thorough reform of the administration of justice and of public security, with a view to rectifying the shortcomings of the Judiciary, the Public Prosecutor's Office and the National Police;

(d) The demobilization of the Voluntary Civil Defence Committees, whose members were reported in the past to have committed the most serious violations of human rights;

(e) The restriction of military jurisdiction to essentially military crimes and misdemeanours and the consequent transfer to ordinary courts of all proceedings against members of the armed forces for ordinary crimes and similar acts;

(f) The demilitarization of the police forces and the start made on restructuring them into a single National Civil Police with the disbandment of the Mobile Military Police and the professionalization of the police function through the establishment of the Police Academy where anybody wishing to join the force, obtain promotion or specialize must undergo training. The Committee notes with satisfaction that the training of members of the police will henceforth include, as a priority subject, the study of human rights and the analysis of the principal international instruments in this sphere, in accordance with the provisions of article 10 of the Convention;

(g) The implementation of intensive training programmes in substantive criminal law for serving judges and the strengthening of the College of Legal Studies to ensure that posts are filled by the best-qualified judges, through a selection process based on objective technical criteria;

(h) The process of purging the National Police and the Financial Police through the dismissal of members suspected of involvement in human rights violations;

(i) The raising of the minimum age for bearing firearms to 25 years;

(j) The numerical reduction in the strength of the armed forces.

3. Factors and difficulties impeding the application of the provisions of the Convention

163. The application of the Convention is being hindered by:

(a) Continued grave qualitative and quantitative weaknesses in the Judiciary, the Public Prosecutor's Office and the Police, which are the State institutions responsible for ensuring the safety of persons and laying the foundations for the functioning of a State which will respect and guarantee human rights;

(b) The repeated instances of intimidation of judges, prosecutors, witnesses, victims and their relations, human rights activists and journalists, which largely account for the absence of decisive action by the bodies that should investigate and try crimes and for the continuance of impunity. Article 13 of the Convention makes States responsible for the protection of victims and witnesses;

(c) The delay in putting into operation the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice;

(d) The inadequacy of the funds allocated by the State to the Human Rights Procurator, which limits his activities in the investigation of alleged human rights violations by State agents, and in the promotion of a culture of tolerance and respect for these rights, at a time in the country's history when particular importance should be attached to those functions;

(e) The spread in Guatemalan society of a deep-rooted culture of violence, which it has not proved possible to reverse.

4. Subjects of concern

164. The Committee is concerned about the following:

(a) The persistence of impunity for crimes, particularly grave human rights violations;

(b) The fact that, although the number of reports of torture has declined, there are still problems resulting from incompetence in the Public Prosecutor's Office, the Judiciary and the Police, which are the State bodies responsible for investigating such reports, identifying and arresting the perpetrators and bringing them to trial;

(c) The increase in the number of reports of cruel, inhuman or degrading treatment by State agents;

(d) The proliferation of the unlawful possession of weapons by private individuals, which is largely responsible for the high levels of criminal violence that seriously jeopardizes the safety of citizens and undermines confidence in the institutions of the rule of law;

(e) The faulty definition of the crime of torture in article 201-A of the Penal Code, which is not consistent with article 1 of the Convention.

5. Recommendations

165. The Committee recommends to the State party that the following actions be taken:

(a) Intensification of efforts to elucidate past grave violations and to ensure that such situations do not recur. Articles 11 and 12 of the Convention require the State to proceed ex officio to a prompt and impartial investigation of any report of torture;

(b) Completion of the process of setting up a single National Civil Police, with the disbandment or demobilization of the Financial Police;

(c) Continuation of the process of reducing the number of permits to carry firearms to the strictly essential minimum;

(d) The putting into operation as soon as possible of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice;

(e) The allocation to the Human Rights Procurator of the necessary funds for effectively carrying out, throughout the national territory, the functions and duties assigned to and enjoined upon him under the Constitution and the law;

(f) Harmonization of article 201-A of the Penal Code with the definition of torture contained in article 1 of the Convention;

(g) The prompt submission, if possible during the coming year, of the third report, the form and content of which should comply with the previously mentioned guidelines on the presentation of reports.

166. The Committee reminds the State authorities that their representatives informed it, during its consideration of the initial report, that the process of preparing the declaration referred to in article 22 of the Convention had been initiated and that in their view no obstacles existed to completing the process.

J. New Zealand

167. The Committee considered the second periodic report of New Zealand (CAT/C/29/Add.4) at its 326th, 327th and 334th meetings, held on 8 May 1998 (CAT/C/SR.326 and 327), and adopted the following conclusions and recommendations.

1. Introduction

168. New Zealand ratified the Convention on 10 December 1989 and made declarations recognizing the competence of the Committee against Torture to receive and consider communications made in accordance with articles 21 and 22 of the Convention. Both the initial report which was presented by New Zealand on 29 July 1992 and the second periodic report were prepared in accordance with article 19 of the Convention and with the Committee's general guidelines concerning the form and content of reports. The second periodic report of New Zealand covers the period from 9 January 1991 to 8 January 1995 and provides information on some significant changes in the legislative and executive activities. Important information is included also in the basic document prepared by New Zealand on 28 September 1993 (HRI/CORE/1/Add.33).

2. Positive aspects

169. Section 9 of the New Zealand Bill of Rights recognizes the rights of persons not to be subjected to torture or to cruel, degrading or disproportionately severe treatment or punishment.

170. The Crimes of Torture Act 1989 has specific and directly enforceable provisions to prohibit acts of torture. The definition of "act of torture" in the Act is in accordance with the relevant definition of article 1 of the Convention.

171. As stated in the second periodic report, the procedures for considering refugee application are implemented at present not by part-time staff, but by regular staff.

172. The Committee is satisfied that the periodic review of the clinical status of mental patients committed to mental hospitals ensures that such compulsory treatment will not violate the mental patients' right to freedom.

173. The prohibition against torture contained in the Crimes of Torture Act now is specifically included in the training manuals of prison officers.

174. The Committee views as a positive development the establishment of "Refugees as Survivors Centres".

3. Subjects of concern

175. A subject of concern to the Committee is the instances of use of physical violence against prisoners of Mangaroa prison by the members of prison personnel. The allegations are that the prisoners were molested by the guards with fists and legs, they were not provided with medical treatment and were deprived of food and proper places of detention. Although these facts, pending the results of the ongoing investigation, cannot be considered as instances of torture, they already amount to cruel and degrading treatment.

4. Recommendations

176. The Committee recommends the completion of the investigation of the incidents of physical violence on prisoners at Mangaroa prison. The State party should inform the Committee on the results.

177. The Committee considers it important to strengthen the supervision of the prisons to prevent the misuse and abuse of power by prison personnel.

178. The Committee considers it desirable that the State party continue its efforts to adopt the new law on extradition, which would simplify the extradition procedure and thus enable it to establish the relevant relations (treaty-based or otherwise) with non-Commonwealth countries.

K. Germany

179. The Committee considered the second periodic report of Germany (CAT/C/29/Add.2) at its 328th and 329th meetings, on 11 May 1998 (CAT/C/SR.328 and 329), and adopted the following conclusions and recommendations.

1. Introduction

180. Germany signed the Convention on 13 October 1986 and deposited its instrument of ratification on 1 October 1990. The Convention entered into force in Germany on 31 October 1990. Upon ratification Germany made declarations concerning its understanding of article 3 of the Convention and the presumptive concordance of German law with the Convention. Germany has not declared in favour of articles 21 and 22. Both the initial report submitted by Germany on 9 March 1992 and the present second periodic report

submitted on 17 December 1996 were prepared in accordance with article 19 of the Convention and in accordance with the general guidelines concerning the form and content of reports. The second periodic report covers the period from 9 March 1992 to 17 December 1996. Important information concerning the State party is also included in the basic document prepared by Germany on 8 August 1996.

2. Positive aspects

181. The Committee is encouraged by the fact that the Domestic Affairs Committee of the German Federal Parliament, the Permanent Conference of the Interior Ministers and Senators of the Länder and the Conference of Ministers of Justice of the Länder have addressed Amnesty International's report on the 70 alleged cases of police ill-treatment, especially against foreigners, between January 1992 and March 1995.

182. The Committee is satisfied that no cases of torture within the strict meaning of article 1 of the Convention have been reported, and that tainted evidence has not been reported as having been used in any judicial proceedings.

183. The Committee is encouraged by the establishment of 12 torture rehabilitation centres and welcomes the fact that the German Government contributes to the United Nations Voluntary Fund for Victims of Torture.

3. Factors and difficulties impeding the application of the provisions of the Convention

184. The Committee is aware of the State party's problems with the integration and management of large numbers of refugees and other minorities of non-German descent and of the problems deriving from the State party's attempts to maintain fair and equitable asylum and immigration procedures.

4. Subjects of concern

185. The Committee is concerned that the precise definition of torture, as contained in article 1 of the Convention, has still not been integrated into the German legal order. While section 340 of the German Criminal Code and the Act on the Suppression of Crime, dated 28 October 1994, would seem to cover most incidents of torture, statistical coverage of the incidence of torture, aggravated forms of torture with specific intent (*dolus specialis*) and incidents causing severe mental pain or suffering ("mental torture" insofar as not covered by article 343 of the German Penal Code) are not covered by current legislative provisions, as required by the Convention. Likewise, it is not absolutely clear that all exculpation by justification and superior order is categorically excluded as required by the Convention.

186. The Committee is concerned at the large number of reports of police ill-treatment, mostly in the context of arrest, received from domestic and international non-governmental organizations in recent years, as well as at the conclusions of the study entitled "The police and foreigners" commissioned by the Conference of Ministers of Internal Affairs in 1994 and presented in February 1996, to the effect that police abuse of foreigners represents more than "just a few isolated cases".

187. The Committee is concerned about the incidents of suicide of persons in detention while awaiting deportation.

188. The Committee is particularly concerned about the apparently low rate of prosecution and conviction in the alleged incidents of ill-treatment by the police, especially of people of foreign descent.

189. The Committee is concerned at the existence of certain open-ended legal provisions permitting, under certain circumstances, the discretionary but significant reduction of the legal guarantees of those detained by the police, such as provisions permitting the police in certain cases to refuse permission to someone detained at a police station to notify a relative of his arrest. Likewise, references to "the principle of proportionality", unless with respect to specific and binding decisions of the German courts, may lead to arbitrary reductions in such guarantees.

5. Recommendations

190. The Committee recommends that the State party adopt the precise definition of the crime of torture foreseen by the Convention and integrate it into the internal German legal order (art. 4, para. 2, of the Convention).

191. The Committee requests the German Government to envisage the possibility of making the necessary declarations so that Germany is bound by articles 21 and 22 of the Convention.

192. The Committee recommends that both internal disciplinary measures against offending police officers and the external prosecutorial and judicial measures be significantly strengthened to ensure that in future all police officers accused of ill-treatment of domestic and foreign nationals alike are brought to justice. In order to ensure that in cases of alleged ill-treatment by police officers such conduct is open to the fullest scrutiny, the Committee recommends, without prejudice to ordinary State procedures, that German criminal procedures be open to subsidiary prosecution by the victims of ill-treatment and that

adherence procedures (*Adhäsionsprozesse*) and civil procedures for damages be made more widely applicable and possible. Adequate legal assistance by competent German legal counsel should be made available. Furthermore, the length of the investigation of complaints of police ill-treatment should be shortened.

193. The Committee recommends that further legislative attention be paid to the strict enforcement of article 15 of the Convention and that all evidence obtained directly or indirectly by torture be strictly prevented from reaching the cognizance of the deciding judges in all judicial proceedings.

194. The Committee recommends that police and immigration officers of all ranks, as well as medical personnel, receive compulsory training concerning human rights in general and especially concerning the Convention against Torture; in view of the fact that most reports of ill-treatment come from foreigners, the Committee recommends that these officers also receive compulsory training in the areas of conflict management and ethnic minorities.

195. The Committee further recommends that Germany continue its efforts to ensure that all detainees, at the outset of their custody, be given a form in a language they understand, outlining their rights, including the right to be informed of the reason for their arrest, to contact a relative and a lawyer of their choice, to submit a complaint about their treatment and to receive medical assistance.

196. In order to make future judicial proceedings against those suspected of ill-treatment possible, police officers should be required to wear a form of personal identification that would make them identifiable to those who allege ill-treatment.

L. Peru

197. The Committee considered the second periodic report of Peru (CAT/C/20/Add.6) at its 330th, 331st and 333rd meetings, held on 12 and 13 May 1998 (see CAT/C/SR.330, 331 and 333), and adopted the following conclusions and recommendations.

1. Introduction

198. The Committee welcomes the submission of the second periodic report of Peru which, despite the six year delay, nonetheless reflects the manifest wish of the State party to maintain dialogue.

199. The Committee also appreciates the fact that the size, quality and highly representative nature of the delegation of Peru is proof of the State party's interest in the work of the Committee.

2. Positive aspects

200. The Committee notes the following positive aspects.

(a) Peru's willingness to give effect to the recommendations that the Committee put forward during the consideration of the State party's initial report;

(b) The abolition of the "faceless judges" system;

(c) The introduction into Peruvian legislation of a definition of torture consistent with the provisions of article 1 of the Convention;

(d) The planned or actual reforms announced by the Minister of Justice, who headed the delegation of Peru, and which are designed to improve the human rights situation in the framework of the fight against terrorist violence and to reaffirm the independence of the judiciary.

3. Factors and difficulties impeding the application of the provisions of the Convention

201. The Committee finds no factors or difficulties impeding the effective application of the Convention by Peru.

4. Subjects of concern

202. The Committee is concerned about the following:

(a) The frequent and numerous allegations of torture;

(b) The maintenance of the competence of military courts to try civilians;

(c) The excessive role still assigned to military courts at the expense of civil courts;

(d) The laws passed between 1995 and 1998, which arguably seem designed as a renewed challenge to the independence of the judiciary:

(i) Act No. 26546 of 26 November 1995 establishing the Executive Commission of the Judiciary;

(ii) Act No. 26623 of 19 June 1996 reorganizing the Office of the Public Prosecutor and establishing the Executive Commission of the Office of the Public Prosecutor;

(iii) Act No. 26695 of 3 December 1996 establishing temporary benches at the Supreme Court and "higher courts";

(iv) Act No. 26933 of 12 March 1998 limiting the powers of the National Council of the Judiciary;

(e) The maintenance of emergency legislation hardly conducive to respect for human rights in general and the elimination of torture in particular.

5. Recommendations

203. While noting and welcoming the new measures that have been taken or announced, including some which are in the spirit of the recommendations made during the consideration of Peru's initial report, the Committee reiterates those recommendations and calls upon the State party to expedite reforms designed to establish a State genuinely founded upon the rule of law.

204. The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure, for example, that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure.

205. The State party should consider, pursuant to articles 6, 11, 12, 13 and 14 of the Convention, taking measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress, compensation and rehabilitation in all circumstances.

M. Panama

206. The Committee considered the third periodic report of Panama (CAT/C/34/Add.9) at its 332nd and 333rd meetings, on 13 May 1998 (CAT/C/SR.332 and 333), and adopted the following conclusions and recommendations.

1. Introduction

207. Panama ratified the Convention on 24 August 1987. It has not made the declarations provided for in articles 21 and 22 of the Convention.

208. It is also a State party to the Inter-American Convention to Prevent and Punish Torture.

209. The third periodic report covers the period from 21 September 1992, when the second periodic report was submitted, to 19 May 1997.

210. The representative of Panama provided additional information during the oral presentation, particularly regarding events after that period.

211. The Committee appreciates Panama's sending a high-level delegation to present the report and the cordial spirit of the discussions.

2. Positive aspects

212. The Committee has received no reports of cases of torture during the period covered by the report.

213. Panamanian legislation contains appropriate safeguards for the effective protection of human rights and especially the prevention of torture, in particular the maximum period of 24 hours, subject to no exception, within which a detainee must be brought before the competent judicial authority, and the prohibition against holding anybody incommunicado.

214. The establishment of the Office of the People's Advocate is a positive step.

215. Other positive measures include the provision in the Judicial Code for a system of monthly visits to prison establishments by judges, magistrates and investigating officers and the establishment by the Public Prosecutor's Department of a "prison mailbox" system to facilitate the exercise by prisoners of their right to lodge complaints and petitions.

216. The implementation of a human rights training project for members of the National Police and the introduction of a technical course on penology at the Faculty of Law and Political Sciences of the University of Panama seem to demonstrate an intention to professionalize this area of public service.

217. The State authorities demonstrate a commendable concern for restructuring the Judiciary to improve the performance of its important role in the effective functioning of a State under the rule of law.

3. Subjects of concern

218. The Committee is concerned about the following:

(a) The absence in Panama's legislation of a stipulated maximum duration of pre-trial detention;

(b) The high proportion of unsentenced detainees in Panama's prisons;

(c) The possibility that compliance with article 3, paragraph 1, of the Convention may be jeopardized by the repatriation of refugees coming from neighbouring countries.

4. Recommendations

219. The Committee recommends that the State party:

(a) Consider the possibility of making the declaration provided for in article 22 of the Convention;

(b) Adopt all necessary safeguards for the protection of refugees from neighbouring countries, in particular so as to ensure that in case of repatriation they are not placed in the situation referred to in article 3, paragraph 1, of the Convention.

N. Kuwait

220. The Committee considered the initial report of Kuwait (CAT/C/37/Add.1) at its 334th and 335th meetings, on 13 May 1998 (CAT/C/SR.334 and 335), and adopted the following conclusions and recommendations.

1. Introduction

221. Kuwait acceded to the Convention against Torture on 8 March 1996 and its initial report was due on 7 March 1997. The report was received in timely fashion on 15 October 1997.

222. The report accords generally with the guidelines for such reports.

2. Positive aspects

223. Kuwait seems to have in place the necessary legal institutions to combat torture.

224. Kuwait has confronted incidents of torture and prosecuted those responsible.

225. The Committee views as a positive step the setting up of a government-funded Torture Victims' Rehabilitation Centre in Kuwait.

3. Factors and difficulties impeding the application of the provisions of the Convention

226. The Committee is not aware of any factors that might impede the application of the provisions of the Convention.

4. Subjects of concern

227. The Committee is concerned that there is no defined crime of torture in Kuwait.

5. Recommendations

228. The Committee recommends that Kuwait consider withdrawing its reservations to the Committee's article 20 jurisdiction.

229. The Committee also recommends that Kuwait consider declaring in favour of articles 21 and 22 of the Convention.

230. The Committee further recommends that Kuwait consider enacting in its Criminal Code a defined crime of torture or, if the Convention applies by incorporation, an independent crime of torture.

231. The Committee looks forward to the additional explanations to be provided to it in writing as promised.

O. Israel

232. The Committee considered the second periodic report of Israel (CAT/C/33/Add.3) at its 336th and 337th meetings, on 14 and 18 May 1998 (CAT/C/SR.336 and 337), and adopted the following conclusions and recommendations.

1. Introduction

233. Israel signed the Convention on 22 October 1986 and deposited its instrument of ratification on 3 October 1991. The Convention entered into force in Israel on 2 November 1991. Upon ratification, Israel made a reservation in respect of articles 20 and 30. Israel has not declared in favour of articles 21 and 22. The second periodic report was due on 1 November 1996 and was received on 6 March 1998.

234. Israel had presented a special report (CAT/C/33/Add.2/Rev.1) at the Committee's request, and the Committee's conclusions and recommendations included the recommendation that the second periodic report of Israel be presented for consideration at the November 1997 session of the Committee. The second periodic report was prepared in accordance with the general guidelines concerning the form and content of such reports.

2. Positive aspects

235. Israel has embarked upon a number of reforms, such as the creation of the Office of Public Defender, the creation of the Kremnitzer Committee to recommend oversight of police violence, amendments to the Criminal Code, ministerial review of several security service interrogation practices and the creation of the Goldberg Committee relating to the rules of evidence.

236. Another positive aspect was the genuine dialogue that engaged the Committee and the Israeli delegation.

3. Factors and difficulties impeding the application of the provisions of the Convention

237. Israel points to the state of insecurity with which it copes, but the Committee notes that, pursuant to article 2, paragraph 2, this cannot justify torture.

4. Subjects of concern

238. The Committee is concerned about the following:

(a) The continued use of the "Landau rules" of interrogation permitting physical pressure by the General Security Services, based as they are upon domestic judicial adoption of the justification of necessity, a justification which is contrary to article 2, paragraph 2, of the Convention;

(b) Resort to administrative detention in the occupied territories for inordinately lengthy periods and for reasons that do not bear on the risk posed by releasing some detainees;

(c) The fact that, since military law and laws going back to the Mandate pertain in the occupied territories, the liberalizing effect of the reforms referred to in paragraph 235 above will not apply there;

(d) Israel's apparent failure to implement any of the recommendations of the Committee that were expressed with regard to both the initial and the special report.[5]

5. Conclusions and recommendations

239. Israel expressed concern that the Committee had not set out *in extenso* the reasoning behind its conclusions and recommendations with regard to Israel's special report. Of course, the dialogue between a State and the Committee forms part of the context upon which the Committee's conclusions and recommendations are made. However, in order to ensure that there is no room for doubt, it was on the basis of the following that the Committee found that its conclusions and recommendations with regard[6] to the Israeli special report should continue to form part of its conclusions and recommendations to the present report:

(a) Since the State party admits that it applies force or "physical pressure" to those in the custody of its officials, the State party bears the burden of persuading the Committee that such force or pressure offends neither articles 1 or 2 nor article 16 of the Convention;

(b) Since the State party admits to hooding, shackling in painful positions, sleep deprivation and shaking of detainees (through its delegates and courts, and supported by the findings of the United Nations Special Rapporteur on Torture)[7] the bare assertion that it is "not severe" is not in and of itself sufficient to satisfy the State's burden and justify such conduct. This is particularly so when reliable evidence from detainees and independent medical evidence made available to Israel reinforce the contrary conclusion;

(c) Given that Israel itself asserts that each case must be dealt with on its own "merits", but that for matters of security, material particulars of the interrogation cannot be revealed to the Committee, it follows that the conclusions of breach of articles 1, 2 and 16 must remain.

240. Accordingly, the Committee reaffirms its conclusions and recommendations with regard to Israel's initial and special reports:

(a) Interrogations applying the methods referred to above are in conflict with articles 1, 2 and 16 of the Convention and should cease immediately;

(b) The provisions of the Convention should be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention;

(c) Israel should consider withdrawing its reservations to article 20 and declaring in favour of articles 21 and 22;

(d) Interrogation procedures pursuant to the "Landau rules" should in any event be published in full.

241. The practice of administrative detention in the occupied territories should be reviewed in order to ensure its conformity with article 16.

242. The Committee would be remiss if it did not acknowledge that the Israeli delegation had initiated upon this occasion a genuine dialogue that revealed Israel's unhappiness with the current situation (without acknowledging any breach of the Convention) and its desire to cooperate with the Committee. The Committee, in its turn, respects Israel's right to present its position, even if the Committee disagrees with its reasons and conclusions, and expresses the genuine desire to continue the dialogue and to resolve the differences between Israel and itself.

P. Sri Lanka

243. The Committee considered the initial report of Sri Lanka (CAT/C/28/Add.3) at its 338th, 339th and 341st meetings, on 18 and 19 May 1998 (CAT/C/SR.338, 339 and 341), and adopted the following conclusions and recommendations.

1. Introduction

244. Sri Lanka acceded to the Convention against Torture on 3 January 1994 but has not recognized the competence of the Committee to consider communications made in accordance with articles 21 and 22 of the Convention.

245. The Committee expresses appreciation for the report of Sri Lanka, which is consistent with the guidelines for such reports, for the annexed material and the introduction and replies by the delegation of the State party to questions put by members of the Committee.

246. The report, which was due in 1995 and was submitted more than two years later, covers the period from accession to 21 November 1997.

2. Positive aspects

247. The Committee welcomes with satisfaction the following positive developments:

(a) The accession to the Convention during extremely difficult times for the country;

(b) The adoption of the Convention against Torture Act No. 22 of 1994 to give effect to the Convention in accordance with the legal system of the State party;

(c) The recent establishment of the Human Rights Commission with several regional offices, including one in Jaffna;

(d) The unequivocal position taken by the Supreme Court as well as other courts on the question of torture and the awards of compensation to victims of torture under the fundamental rights jurisdiction of the Supreme Court;

(e) Seminars and other work carried out by the International Committee of the Red Cross (ICRC) and the participation of the medical profession in such seminars;

(f) The recent accession by the State party to the First Optional Protocol to the International Covenant on Civil and Political Rights;

(g) The State party's readiness to cooperate with the Committee in order to comply with the Convention;

(h) The support of victims of torture as expressed by both donations to the United Nations Voluntary Fund for the Victims of Torture and support to the Centre for Rehabilitation.

3. Factors and difficulties impeding the application of the provisions of the Convention

248. The Committee takes note of the following:

(a) The serious internal situation faced by the State party, which however in no way justifies any violation of the Convention;

(b) A very low per capita income;

(c) The fact that for years in the past police officers appeared to be immune from prosecution.

4. Subjects of concern

249. The Committee is gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances.

250. The Committee regrets that there were few, if any, prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims.

251. The Committee notes the absence, until recently, of independent and effective investigation of scores of allegations of disappearances linked with torture.

252. The Committee noted that, while the Convention against Torture Act 22/94 covers most of the provisions of the Convention, there were certain significant omissions.

253. The question of the admissibility under the emergency regulation of confessions is also a matter of concern, as well as the absence of strict legislation governing detention consistent with international norms.

5. Recommendations

254. The Committee urges the State party to review Convention against Torture Act 22/94 and other relevant laws in order to ensure complete compliance with the Convention, in particular in respect of: (a) the definition of torture; (b) acts that amount to torture; and (c) extradition, return and expulsion.

255. The Committee furthermore recommends that the State party:

(a) Review the emergency regulations and the Prevention of Terrorism Act as well as rules of practice pertaining to detention to ensure that they conform with the provisions of the Convention;

(b) Ensure that all allegations of torture – past, present and future – are promptly, independently and effectively investigated and the recommendations implemented without any delay;

(c) While continuing to remedy, through compensation, the consequences of torture, give due importance to prompt criminal prosecutions and disciplinary proceedings against culprits;

(d) Take the necessary measures to ensure that justice is not delayed, especially in the cases of trials of people accused of torture;

(e) Strengthen the Human Rights Commission and other mechanisms dealing with torture prevention and investigation and provide them with all the means that are necessary to ensure their impartiality and effectiveness.

256. The Committee urges the State party to declare in favour of articles 21 and 22 of the Convention.

257. The Committee would be remiss if it did not acknowledge that the Sri Lankan delegation made every effort to make the dialogue with the Committee fruitful, so that the State party might be helped to put an end to violations of the Convention.

Chapter V
General comment of the Committee

258. The Committee against Torture at its sixteenth session decided, on 10 May 1996, to set up a working group to examine questions relating to articles 3 and 22 of the Convention. In fact, the Committee had noticed that most of the individual communications received under article 22 of the Convention in recent years had concerned cases of persons under an order of expulsion, return or extradition who alleged that they would have been in danger of being subjected to torture if they were expelled, returned or extradited. The Committee felt that some guidance should be given to the States parties and to the authors of communications to enable them to apply correctly the provisions of article 3 in the context of the procedure set forth by article 22 of the Convention. The working group was composed of Ms. Iliopoulos-Strangas, Mr. Pikis and Mr. Zupancic. They prepared separate proposals taking into account an informal document submitted to them by Canada on 10 December 1996. Owing to lack of time, the Committee was not able to discuss the issue until its nineteenth session, in November 1997. At that session, Mr. Burns acted as coordinator of the proposals put forward by the members of the working group. On 21 November 1997, the Committee adopted the general comment on the implementation of article 3 in the context of article 22 of the Convention. It was the first general comment elaborated by the Committee since the beginning of its mandate in 1988. The text of the general comment appears in annex IX to the present report.

Chapter VI
Activities of the Committee under article 20 of the Convention

259. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information.

260. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

261. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

262. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth to twentieth session. During those sessions the Committee devoted the following number of closed meetings to its activities under that article:

Sessions	*Number of closed meetings*
Fourth	4
Fifth	4
Sixth	3
Seventh	2
Eighth	3
Ninth	3
Tenth	8
Eleventh	4
Twelfth	4
Thirteenth	3
Fourteenth	6
Fifteenth	4
Sixteenth	4
Seventeenth	4
Eighteenth	5
Nineteenth	4
Twentieth	5

263. In accordance with the provisions of article 20 of the Convention and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 are confidential and all the meetings concerning its proceedings under that article are closed.

264. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

Chapter VII

Consideration of communications under article 22 of the Convention

265. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit communications to the Committee against Torture for consideration. Thirty nine out of 104 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Greece, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Senegal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Yugoslavia. No communication may be considered by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

266. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22 – submissions from the parties and other working documents of the Committee – are confidential.

267. In carrying out its work under article 22, the Committee may be assisted by a working group of not more than five of its members or by a special rapporteur designated from among its members. The working group or the special rapporteur submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee). Special rapporteurs may take procedural decisions (under rule 108) during inter-sessional periods, thereby expediting the processing of communications by the Committee.

268. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, which has been taken by it (rule 110, para. 2). In cases that require expeditious consideration, the Committee invites the States parties concerned, if they have no objections to the admissibility of the communications, to furnish immediately their observations on the merits of the case.

269. The Committee concludes examination of an admissible communication by formulating its Views thereon in the light of all information made available to it by the complainant and the State party. The Views of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 111, para. 3, of the rules of procedure of the Committee) and are made available to the general public. Generally, the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public without disclosing the identity of the author of the communication but identifying the State party concerned.

270. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined. The Committee may also include in its annual report the text of its Views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

271. During the period covered by the present report (nineteenth and twentieth sessions), the Committee had 70 communications before it for consideration.

272. At its nineteenth session, the Committee decided to declare three communications admissible, to be considered on the merits.

273. Also at its nineteenth session, the Committee declared inadmissible communications Nos. 42/1996 (*R. K. v. Canada*), 45/1996 (*D. v. France*), 52/1996 (*R. v. France*) and

64/1997 (*L. M. V. R. G. and M. A. B. C. v. Sweden*) because they did not meet the conditions laid down in article 22, paragraph 5 (b), of the Convention. The text of those decisions is reproduced in annex X to the present report.

274. At its nineteenth session, the Committee adopted Views in respect of communications Nos. 28/1995 (*E. A. v. Switzerland*) and 57/1996 (*P. Q. L. v. Canada*).

275. In its Views on communication No. 28/1995 (*E. A. v. Switzerland*), the Committee considered that the return of the applicant to Turkey would not violate Switzerland's obligations under article 3 of the Convention. The Committee came to its conclusion on the basis of the fact that the applicant's political activities dated from the beginning of the 1980s and that there was no substantiation that the authorities were looking for him since. The text of the Committee's Views is reproduced in annex X to the present report.

276. In its Views on communication No. 57/1996 (*P. Q. L. v. Canada*), the Committee found that the return of the applicant to China would not violate Canada's obligations under article 3 of the Convention. The Committee considered that the author had not claimed to have participated in political activities in China, nor did he belong to a political, professional or social group targeted by the authorities for repression or torture. The text of the Committee's Views is reproduced in annex X to the present report.

277. At its twentieth session, the Committee decided to discontinue the consideration of communications Nos. 19/1994, 50/1996, 85/1997 and 98/1997. It also decided to declare two communications admissible, to be considered on the merits.

278. Also at its twentieth session, the Committee declared inadmissible communications Nos. 47/1996 (*V. V. v. Canada*) and 58/1996 (*J. M. U. M. v. Sweden*) because they did not meet the conditions laid down in article 22, paragraph 5 (b), of the Convention. It also declared inadmissible communication 48/1996 (*H. W. A. v. Switzerland*) since, the author having left the State party's territory, article 3 of the Convention no longer applied. The text of those decisions is reproduced in annex X to the present report.

279. At its twentieth session, the Committee adopted Views in respect of communications Nos. 59/1996 (*Blanco Abad v. Spain*), 61/1996 (*X., Y. and Z. v. Sweden*), 65/1997 (*I. A. O. v. Sweden*), 83/1997 (*G. R. B. v. Sweden*), 89/1997 (*Ali Falakaflaki v. Sweden*), 90/1997 (*A. L. N. v. Switzerland*) and 94/1997 (*K. N. v. Switzerland*). The text of the Views is reproduced in annex X to the present report.

280. In its Views on communication No. 59/1996 (*Blanco Abad v. Spain*), the Committee considered that the facts before it revealed a violation of articles 12 and 13 of the Convention. The Committee found that the lack of investigation of the allegations made by the author to the forensic physician and the judge of the National High Court as well as the amount of time elapsed between the reporting of the facts and the initiation of proceedings by the Criminal Investigation Court were incompatible with the obligation to proceed to a prompt investigation, as provided for in article 12 of the Convention. The Committee also considered that the judicial investigation did not satisfy the requirement for promptness in examining complaints prescribed by article 13 of the Convention. Moreover, the Committee found no justification for the refusal of the judicial authorities to allow evidence proposed by the author and considered those omissions to be incompatible with the obligation to proceed to an impartial investigation, as provided for in article 13.

281. With respect to communication No. 61/1996 (*X., Y. and Z. v. Sweden*), the Committee was of the view that the information available did not show that substantial grounds existed for believing that the authors would be in danger of being subjected to torture if returned to the Democratic Republic of the Congo. The Committee considered, *inter alia*, that the authors' fear of being subjected to torture was originally based on their political activities for the People's Revolutionary Party (PRP). It noted, however, that that party was currently part of the alliance forming the Government in the Democratic Republic of the Congo and that the authors' fear thus appeared to lack substantiation.

282. With respect to communication No. 65/1997 (*I. A. O. v. Sweden*), the Committee considered that the information available did not show that substantial grounds existed for believing that the author would be in danger of being subjected to torture if returned to Djibouti. The Committee noted that a risk of being detained as such was not sufficient to trigger the protection of article 3 of the Convention.

283. In its Views on communication No. 83/1997 (*G. R. B. v. Sweden*), the Committee found that the issue of whether the State party had an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, fell outside the scope of article 3 of the Convention. It also considered that the aggravation of the author's state of health possibly caused by her deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.

284. In its Views on communication No. 89/1997 (*Ali Falakaflaki v. Sweden*) the Committee considered that, under article 3 of the Convention, the State party had an obligation

to refrain from forcibly returning the author to the Islamic Republic of Iran or to any other country where he would run a real risk of being expelled or returned to the Islamic Republic. In reaching its decision the Committee took into account the author's claim that he was a political activist and that he had been tortured previously, as well as medical evidence that he suffered from a post-traumatic stress disorder.

285. With respect to communication No. 90/1997 (*A. L. N. v. Switzerland*), the Committee considered that the information before it did not show substantial grounds for believing that the author ran a personal risk of being tortured if sent back to Angola. It noted, *inter alia*, that the author based his fear of torture on the fact that he was being sought by forces of the Popular Movement for the Liberation of Angola (MPLA). However, he had put forward no reason to suggest that he was indeed still wanted. Accordingly, the Committee concluded that the facts did not indicate a breach of article 3 of the Convention.

286. In its Views on communication No. 94/1997 (*K. N. v. Switzerland*), the Committee considered that the facts before it did not reveal a breach of article 3 of the Convention, since no substantial grounds existed for believing that the author would be personally at risk of being subjected to torture if he were to be returned to Sri Lanka. The Committee noted that the author's main reason for leaving his country appeared to be that he felt caught between the two parties in the ongoing internal conflict in the country. However, there was no indication that the author himself was personally targeted by the Sri Lankan authorities for repression.

Chapter VIII

Amendments to the rules of procedure of the Committee

287. At its 328th meeting, on 11 May 1998, the Committee adopted amendments to rules 14, 18 and 78 of its rules of procedure (see CAT/C/3/Rev.2) which concerned: (a) modalities relating to the solemn declaration of Committee members; (b) criteria to designate one of the Vice-Chairmen as Acting Chairman and the extension of his functions in the period between session; and (c) the consideration of a State party report when the State concerned is under the inquiry procedure established by article 20 of the Convention. The text of the amended rules appears in annex XI to the present report.

Chapter IX

Adoption of the annual report of the Committee

288. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

289. Since the Committee will hold its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

290. Accordingly, at its 343rd and 344th meetings, held on 20 and 22 May 1998, the Committee considered the draft report on its activities at the nineteenth and twentieth sessions (CAT/C/XX/CRP.1 and Add.1-8). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its twenty-first session (9 to 20 November 1998) will be included in the annual report of the Committee for 1999.

Notes

[1] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 44* (A/50/44), paras. 207-209.

[2] Ibid., *Fifty-second Session, Supplement No. 44* (A/52/44), paras. 287-290.

[3] Ibid., *Forty-fifth Session, Supplement No. 44* (A/45/44), paras. 14-16.

[4] Ibid., *Forty-ninth Session, Supplement No. 44* (A/49/44), paras. 12-13.

[5] See ibid., paras. 159-171; and ibid., *Fifty-second Session, Supplement No. 44* (A/52/44), paras. 253-260.

[6] See ibid., *Fifty-second Session, Supplement No. 44* (A/52/44), para. 260 (a)-(d).

[7] E/CN.4/1998, 38, para. 121.

Annex I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 22 May 1998

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	
Bosnia and Herzegovina		6 March 1992[b]
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		8 October 1991[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Czech Republic		1 January 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Jordan		13 November 1991[a]
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Malawi		11 June 1996[a]

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Malta		13 September 1990[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]
Morocco	8 January 1986	21 June 1993
Namibia		28 November 1994[a]
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	
Slovakia		29 May 1993[a]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]

State	*Date of signature*	*Date of receipt of the instrument of ratification or accession*
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Yugoslavia	18 April 1989	10 September 1991

[a] Accession.

[b] Succession.

Annex II

States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 22 May 1998[a]

Afghanistan

Bahrain

Belarus

Bulgaria

China

Cuba

Israel

Kuwait

Morocco

Saudi Arabia

Ukraine

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[a] Total of eleven (11) States parties.

Annex III

States parties that have made the declarations provided for in articles 21 and 22 of the Convention,[a] as at 22 May 1998[b]

State party	*Date of entry into force*
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Bulgaria	12 June 1993
Canada	24 July 1987
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Poland	12 June 1993
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Slovakia	17 April 1995
Slovenia	16 July 1993
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987

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[a] The United Kingdom of Great Britain and Northern Ireland and the United States of America made only the declarations provided for in article 21 of the Convention.

[b] Total of 39 States parties.

State party	*Date of entry into force*
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Venezuela	26 April 1994
Yugoslavia	10 October 1991

Annex IV

Membership of the Committee against Torture in 1998

Name of member	*Country of nationality*	*Term expires on 31 December*
Mr. Peter Thomas BURNS	Canada	1999
Mr. Guibril CAMARA	Senegal	1999
Mr. Sayed Kassem EL MASRY	Egypt	2001
Mr. Alejandro GONZÁLEZ POBLETE	Chile	1999
Mr. Andreas MAVROMMATIS	Cyprus	1999
Mr. António SILVA HENRIQUES GASPAR	Portugal	2001
Mr. Bent SØRENSEN	Denmark	2001
Mr. Alexander M. YAKOVLEV	Russian Federation	2001
Mr. YU Mengjia	China	2001
Mr. Bostjan M. ZUPANČIČ	Slovenia	1999

Annex V

Joint Declaration for the United Nations Day in Support of Victims of Torture

The Committee against Torture, the Board of Trustees of the Voluntary Fund for Victims of Torture, the Special Rapporteur of the Commission on Human Rights on questions relating to torture and the United Nations High Commissioner for Human Rights, meeting at the United Nations Office at Geneva on 19 May 1998,

Recalling the appeal against torture of the High Commissioner for Human Rights, in Copenhagen, on 28 June 1994, in which he stated that ending torture was a beginning of true respect for the most basic of all human rights: the intrinsic dignity and value of each individual,

Welcoming the decision of the General Assembly to declare 26 June United Nations International Day in Support of Victims of Torture,

Recognizing that torture is one of the vilest acts to be perpetrated by human beings upon each other,

Recognizing that torture is prohibited by article 5 of the Universal Declaration of Human Rights,

Recognizing that torture is a breach of a non-derogable human right and a crime under international law,

Urge all States to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservation, if they have not already done so,

Urge States parties to the Convention that have not yet accepted its optional provisions to do so as soon as possible,

Urge all States to ensure that torture is a crime in their domestic law and to rigorously pursue perpetrators whenever the act was committed and bring them to justice,

Urge all States to provide for compensation and rehabilitation of the victims of torture in their domestic law,

Urge all States to contribute to the United Nations Voluntary Fund for Victims of Torture as fully and as often as they can,

Urge all States to cooperate with the United Nations Special Rapporteur on Torture in fulfilling its mandate when requested to do so,

Consider that, by these means, the vile crime of torture may be condemned and suppressed by all the people of the world.

Annex VI

Guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1 of the Convention

Adopted by the Committee at its 85th meeting (sixth session), on 30 April 1991, and revised at its 318th meeting (twentieth session), on 18 May 1998[a]

1. Under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, "the States parties shall submit to the Committee against Torture, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States party shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request".

2. The general guidelines for the submission of periodic reports appearing below would assist the Committee in fulfilling the tasks entrusted to it pursuant to article 19 of the Convention.

3. Periodic reports by States parties should be presented in three parts, as follows:

Part I: Information on new measures and new developments relating to the implementation of the Convention following the order of articles 1 to 16, as appropriate

(a) This part should describe in detail:

(i) Any new measures taken by the State party to implement the Convention during the period extending from the date of submission of its previous report to the date of submission of the periodic report to be considered by the Committee;

(ii) Any new developments which have occurred during the same period and are relevant to the implementation of the Convention;

(b) The State party should provide, in particular, information concerning:

(i) Any change in the legislation and in institutions that affect the implementation of the Convention on any territory under its jurisdiction, in particular, on places of detention and on training given to law enforcement and medical personnel;

(ii) Any new case law of relevance for the implementation of the Convention;

(iii) Complaints, inquiries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Any difficulty that would prevent the State party from fully discharging the obligations it has assumed under the Convention.

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[a] The consolidated guidelines for the initial part of State party reports to be submitted under the various international human rights instruments, including the Convention (HRI/1991/1), were sent to States parties by note verbale G/SO 221 (1) of 26 April 1991.

Part II: Additional information requested by the Committee

This part should contain any information requested by the Committee and not provided by the State party, during the Committee's consideration of the preceding report of the State party. If the information has been provided by the State party, either in a subsequent communication or in an additional report submitted in accordance with rule 67, paragraph 2, of the Committee's rules of procedure, the State party does not need to repeat it.

Part III: Compliance with the Committee's conclusions and recommendations

This part should provide information on measures taken by the State party to comply with the conclusions and recommendations addressed to it by the Committee at the end of its consideration of the State party's initial and periodic reports.

Annex VII

Status of submission of reports by States parties under article 19 of the Convention as at 22 May 1998

A. Initial reports

Initial reports due in 1988 (27)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Afghanistan	26 June 1987	25 June 1988	21 January 1992	CAT/C/5/Add.31
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belarus	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add.25
Bulgaria	26 June 1987	25 June 1988	12 September 1991	CAT/C/5/Add.28
Cameroon	26 June 1987	25 June 1988	15/2/89 & 25/4/91	CAT/C/5/Add.16 & 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26/7/88 & 20/11/90	CAT/C/5/Add.5 & 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988	15 October 1991	CAT/C/5/Add.29
Mexico	26 June 1987	25 June 1988	10/8/88 & 13/2/90	CAT/C/5/Add.7 & 22
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26/7/88 & 28/4/89	CAT/C/5/Add.6 & 18
Russian Federation	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (Replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukraine	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Uruguay	26 June 1987	25 June 1988	6/6/91 & 5/12/91	CAT/C/5/Add.27 & 30

Initial reports due in 1989 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chile	30 October 1988	29 October 1989	21/9/89 & 5/11/90	CAT/C/7/Add.2 & 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 & 14
Colombia	7 January 1988	6 January 1989	24/4/89 & 28/8/90	CAT/C/7/Add.1 & 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21/11/89 & 14/5/91	CAT/C/7/Add.4 & 12
Ecuador	29 April 1988	28 April 1989	27/6/90 & 28/2/91 & 26/9/91	CAT/C/7/Add.7 & 11 & 13

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9/11/92 & 22/2/94	CAT/C/7/Add.15 & 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990 (11)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27/8/91-11/6/92	CAT/C/9/Add.8 & 11
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14/5/91-27/8/92	CAT/C/9/Add.7 & 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14/3-11/9-13/9/90	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22/3/91-30/4/92	CAT/C/9/Add.6,10 & 14

Initial reports due in 1991 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991	2/11/94 & 31/7/95	CAT/C/12/Add.5 & 6
Liechtenstein	2 December 1990	1 December 1991	5 August 1994	CAT/C/12/Add.4
Malta	13 October 1990	12 October 1991	3 January 1996	CAT/C/12/Add.7
New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		

Initial reports due in 1992 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Croatia	8 October 1991	7 October 1992	4 January 1996	CAT/C/16/Add.6
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992		
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992	23 November 1994	CAT/C/16/Add.5
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Venezuela	28 August 1991	27 August 1992		
Yemen	5 December 1991	4 December 1992		
Yugoslavia	10 October 1991	9 October 1992	20 January 1998	CAT/C/16/Add.7

Initial reports due in 1993 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Benin	11 April 1992	10 April 1993		
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		

Initial reports due in 1994 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994	20/4/95 & 21/12/95	CAT/C/24/Add.4 & Rev.1
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994		
Mauritius	8 January 1993	7 January 1994	10/5/94-1/3/95	CAT/C/24/Add.1 & 3
Morocco	21 July 1993	20 July 1994	29 July 1994	CAT/C/24/Add.2
Slovakia	28 May 1993	27 May 1994		
Slovenia	15 August 1993	14 August 1994		

Initial reports due in 1995 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Albania	10 June 1994	9 June 1995		
Ethiopia	13 April 1994	12 April 1995		
Georgia	25 November 1994	24 November 1995	4 June 1996	CAT/C/28/Add.1
Namibia	28 December 1994	27 December 1995	23 August 1996	CAT/C/28/Add.2
Sri Lanka	2 February 1994	1 February 1995	27 October 1997	CAT/C/28/Add.3
The former Yugoslav Rep. of Macedonia	12 December 1994	11 December 1995	22 May 1997	CAT/C/28/Add.4
United States of America	20 November 1994	19 November 1995		

Initial reports due in 1996 (5)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chad	9 July 1995	8 July 1996		
Cuba	16 June 1995	15 June 1996	15 November 1996	CAT/C/32/Add.2
Republic of Korea	8 February 1995	7 February 1996	10 February 1996	CAT/C/32/Add.1
Republic of Moldova	28 December 1995	27 December 1996		
Uzbekistan	28 October 1995	27 October 1996		

Initial reports due in 1997 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Azerbaijan	15 September 1996	14 September 1997		
Côte d'Ivoire	17 January 1996	16 January 1997		
Democratic Republic of the Congo	17 April 1996	16 April 1997		
El Salvador	17 July 1996	16 July 1997		
Iceland	22 November 1996	21 November 1997	12 February 1998	CAT/C/37/Add.2
Kuwait	7 April 1996	6 April 1997	5 August 1997	CAT/C/37/Add.1
Lithuania	2 March 1996	1 March 1997		
Malawi	11 July 1996	10 July 1997		

Initial reports due in 1998 (4)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Honduras	4 January 1997	3 January 1998		
Kenya	23 March 1997	22 March 1998		
Kyrgyzstan	5 October 1997	4 October 1998		
Saudi Arabia	22 October 1997	21 October 1998		

B. Second periodic reports[a]

Second periodic reports due in 1992 (26)

State party	First periodic report date due	Date of submission	Symbol
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992		
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992		
Cameroon	25 June 1992		
Canada	23 July 1992	11 September 1992	CAT/C/17/Add.5
Denmark	25 June 1992	22 February 1995	CAT/C/17/Add.13
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992	19 December 1996	CAT/C/17/Add.18
Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992		
Mexico	25 June 1992	21 July 1992 and 28 May 1996	CAT/C/17/Add.3 and Add. 17
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992	17 January 1996	CAT/C/17/Add.15
Senegal	25 June 1992	27 March 1995	CAT/C/17/Add.14
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992		
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992	25 March 1996	CAT/C/17/Add.16

Second periodic reports due in 1993 (9)

State party	Second periodic report date due	Date of submission	Symbol
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993	2 December 1995	CAT/C/20/Add.5
Colombia	6 January 1993	4 August 1995	CAT/C/20/Add.4
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993	20 January 1997	CAT/C/20/Add.6
Tunisia	22 October 1993	10 November 1997	CAT/C/20/Add.7
Turkey	31 August 1993		

Second periodic reports due in 1994 (11)

State party	Second periodic report date due	Date of submission	Symbol
Algeria	11 October 1994	23 February 1996	CAT/C/25/Add.8
Australia	6 September 1994		
Brazil	27 October 1994		
Finland	28 September 1994	11 September 1995	CAT/C/25/Add.7
Guinea	8 November 1994		
Italy	10 February 1994	20 July 1994	CAT/C/25/Add.4
Libyan Arab Jamahiriya	14 June 1994	30 June 1994	CAT/C/25/Add.3
Netherlands	19 January 1994	14/4/94 & 16/6/94 & 27/3/95	CAT/C/25/Add.1, 2 & 5
Poland	24 August 1994		
Portugal	10 March 1994	7 November 1996	CAT/C/25/Add.10
United Kingdom of Great Britain and Northern Ireland	6 January 1994	25 March 1995	CAT/C/25/Add.6

Second periodic reports due in 1995 (7)

State party	Second periodic report date due	Date of submission	Symbol
Germany	30 October 1995	17 December 1996	CAT/C/29/Add.2
Guatemala	3 February 1995	13 February 1997	CAT/C/29/Add.3
Liechtenstein	1 December 1995		
Malta	12 October 1995		
New Zealand	8 January 1995	25 February 1997	CAT/C/29/Add.4
Paraguay	10 April 1995	10 July 1996	CAT/C/29/Add.1
Somalia	22 February 1995		

Second periodic reports due in 1996 (10)

State party	Second periodic report date due	Date of submission	Symbol
Croatia	7 October 1996	5 March 1998	CAT/C/33/Add.4
Cyprus	16 August 1996		
Estonia	19 November 1996	12 September 1996	CAT/C/33/Add.1
Israel	1 November 1996	6 December 1996 and 7 February 1997 (special report) 26 February 1998	C/33/Add.2/Rev.1 CAT/C/33/Add.3
Jordan	12 December 1996		
Nepal	12 June 1996		
Romania	16 January 1996		
Venezuela	27 August 1996		
Yemen	4 December 1996		
Yugoslavia	9 October 1996		

Second periodic reports due in 1997 (8)

State party	Second periodic reports date due
Benin	10 April 1997
Bosnia and Herzegovina	5 March 1997
Cambodia	13 November 1997
Cape Verde	3 July 1997
Czech Republic	31 December 1997
Latvia	13 May 1997
Monaco	4 January 1997
Seychelles	3 June 1997

Second periodic reports due in 1998 (8)

State party	Second periodic reports date due
Antigua and Barbuda	17 August 1998
Armenia	12 October 1998
Burundi	19 March 1998
Costa Rica	10 December 1998
Mauritius	7 January 1998
Morocco	20 July 1998
Slovakia	27 May 1998
Slovenia	14 August 1998

C. Third periodic reports

Third periodic reports due in 1996 (26)

State party	Third periodic report date due	Date of submission	Symbol
Afghanistan	25 June 1996		
Argentina	25 June 1996	26 September 1996	CAT/C/34/Add.5
Austria	27 August 1996		
Belarus	25 June 1996		
Belize	25 June 1996		
Bulgaria	25 June 1996		
Cameroon	25 June 1996		
Canada	23 July 1996		
Denmark	25 June 1996	5 July 1996	CAT/C/34/Add.3
Egypt	25 June 1996		
France	25 June 1996		
Hungary	25 June 1996	21 April 1998	CAT/C/34/Add.10
Luxembourg	28 October 1996		
Mexico	25 June 1996	25 June 1996	CAT/C/34/Add.2
Norway	25 June 1996	6 February 1997	CAT/C/34/Add.8
Panama	22 September 1996	19 May 1997	CAT/C/34/Add.9
Philippines	25 June 1996		
Russian Federation	25 June 1996		
Senegal	25 June 1996		
Spain	19 November 1996	18 November 1996	CAT/C/34/Add.7
Sweden	25 June 1996	23 August 1996	CAT/C/34/Add.4
Switzerland	25 June 1996	7 November 1996	CAT/C/34/Add.6
Togo	17 December 1996		
Uganda	25 June 1996		
Ukraine	25 June 1996	19 June 1996	CAT/C/34/Add.1
Uruguay	25 June 1996		

Third periodic reports due in 1997 (9)

State party	Third periodic report date due	Date of submission	Symbol
Chile	29 October 1997		
China	2 November 1997		
Colombia	6 January 1997		
Ecuador	28 April 1997		
Greece	4 November 1997		
Guyana	17 June 1997		
Peru	5 August 1997		
Tunisia	22 October 1997		
Turkey	31 August 1997		

Third periodic reports due in 1998 (11)

State party	Third periodic report date due	Date of submission	Symbol
Algeria	11 October 1998		
Australia	6 September 1998		
Brazil	27 October 1998		
Finland	28 September 1998		
Guinea	8 November 1998		
Italy	10 February 1998		
Libyan Arab Jamahiriya	14 June 1998		
Netherlands	19 January 1998		
Poland	24 August 1998		
Portugal	10 March 1998		
United Kingdom of Great Britain and Northern Ireland	6 January 1998	2 April 1998	CAT/C/44/Add.1

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[a] By decision of the Committee at its seventh, tenth and thirteenth sessions, those States parties which had not yet submitted their initial report due in 1988, 1989 and 1990, namely Brazil, Guinea, Guyana, Togo and Uganda, have been invited to submit both the initial and the second periodic reports in one document.

Annex VIII

Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its nineteenth and twentieth sessions

A. Nineteenth session

Report	Rapporteur	Alternate
Argentina: third periodic report (CAT/C/34/Add.5)	Mr. González Poblete	Mr. Zupančič
Cyprus: second periodic report (CAT/C/33/Add.1)	Mr. Burns	Mr. Sorensen
Cuba: initial report (CAT/C/32/Add.2)	Mr. Pikis	Mr. Zupančič
Portugal: second periodic report (CAT/C/25/Add.10)	Mr. Camara	Mme. Iliopoulos-Strangas
Spain: third periodic report (CAT/C/34/Add.7)	Mr. González Poblete	Mr. Dipanda Mouelle
Switzerland: third periodic report (CAT/C/34/Add.6)	Mr. Dipanda Mouelle	Mrs. Iliopoulos-Strangas

B. Twentieth session

Report	Rapporteur	Alternate
France: second periodic report (CAT/C/17/Add.18)	Mr. Camara	Mr. Burns
Germany: second periodic report (CAT/C/29/Add.2)	Mr. Zupančič	Mr. Burns
Guatemala: second periodic report (CAT/C/29/Add.3)	Mr. González Poblete	Mr. Sorensen
Israel: second periodic report (CAT/C/33/Add.3)	Mr. Burns	Mr. Sorensen

Report	Rapporteur	Alternate
Kuwait: initial report (CAT/C/37/Add.1)	Mr. Burns	Mr. El Masry
New Zealand: second periodic report (CAT/C/29/Add.4)	Mr. Yakovlev	Mr. Zupančič
Norway: third periodic report (CAT/C/34/Add.8)	Mr. Sorensen	Mr. Yakovlev
Panama: third periodic report (CAT/C/34/Add.9)	Mr. Gonzalez Poblete	Mr. Silva Henriques Gaspar
Peru: second periodic report (CAT/C/20/Add.6)	Mr. Camara	Mr. Zupančič
Sri Lanka: initial report (CAT/C/28/Add.3)	Mr. Mavrommatis	Mr. Yu Mengjia

Annex IX

General comment on the implementation of article 3 of the Convention in the context of article 22

In view of the requirements of article 22, paragraph 4, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that the Committee against Torture "shall consider communications received under article 22 in the light of all information made available to it by or on behalf of the individual and by the State Party concerned",

In view of the need arising as a consequence of the application of rule 111, paragraph 3, of the rules of procedure of the Committee (CAT/C/3/Rev.2), and

In view of the need for guidelines for the implementation of article 3 under the procedure foreseen in article 22 of the Convention,

The Committee against Torture, at its nineteenth session, 317th meeting, held on 21 November 1997, adopted the following General Comment for the guidance of States parties and authors of communications:

1. Article 3 is confined in its application to cases where there are substantial grounds for believing that the author would be in danger of being subjected to torture as defined in article 1 of the Convention.

2. The Committee is of the view that the phrase "another State" in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited.

3. Pursuant to article 1, the criterion, mentioned in article 3, paragraph 2, of "a consistent pattern or gross, flagrant or mass violations of human rights" refers only to violations by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Admissibility

4. The Committee is of the opinion that it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication under article 22 of the Convention by fulfilling each of the requirements of rule 107 of the rules of procedure of the Committee.

Merits

5. With respect to the application of article 3 of the Convention to the merits of a case, the burden is upon the author to present an arguable case. This means that there must be a factual basis for the author's position sufficient to require a response from the State party.

6. Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable.

7. The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. All pertinent information may be introduced by either party to bear on this matter.

8. The following information, while not exhaustive, would be pertinent:

(a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights (see art. 3, para. 2)?

(b) Has the author been tortured or maltreated by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?

(c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after-effects?

(d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?

(e) Has the author engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?

(f) Is there any evidence as to the credibility of the author?

(g) Are there factual inconsistencies in the claim of the author? If so, are they relevant?

9. Bearing in mind that the Committee against Torture is not an appellate, a quasi-judicial or an administrative body, but rather a monitoring body created by the States parties themselves with declaratory powers only, it follows that:

(a) Considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of fact that are made by organs of the State party concerned; but

(b) The Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

Annex X

Views and decisions of the Committee under article 22 of the Convention

A. Views

1. Communication No. 28/1995

Submitted by:	E. A. (name deleted) (represented by counsel)
Alleged victim:	The author
State party:	Switzerland
Date of communication:	14 June 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 1997,

Having concluded its consideration of communication No. 28/1995, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is a Turkish citizen of Kurdish ethnic origin, born in 1961, who left Turkey in July 1990 and requested political asylum in Switzerland on 23 July 1990. At the time of submission the author was residing in Switzerland, but on 10 August 1995 he left Switzerland and is now believed to be residing with relatives in Munich, Germany. In his submission the author claimed that his expulsion to Turkey would have constituted a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The facts as submitted by the author

2.1 The author has been a sympathizer of the illegal organization Dev-Yol since the end of the 1970s. He was involved in propaganda activities until 1980. At the end of 1980, he was arrested by the Turkish authorities and kept in police detention for one and a half months, during which he was tortured. Later he was again detained for a month, since he failed to appear before the Military Tribunal.

2.2 In October 1980, the author started his military service. On 22 April 1983, the Military Tribunal acquitted the author of the charges against him. The author states, however, that he continued to be harassed and detained for short periods, despite his acquittal. After the trial, the author halted his public political activities. In July 1988, while he was working at the Atatürk dam, he was stopped by the police and interrogated about the political activities of his colleagues. One week later, he had a collision with a military jeep, because of which he broke his lower leg and was unable to work for 17 months. According to the author, the collision was no accident, but an attack in order to scare him.

2.3 The author further explains that he was also in danger because of political activities of family members. His elder brother was detained from 1975 to 1979/80 because of his membership in Dev-Yol, and has been in hiding since. The author has lost contact with his brother, but states that the police called him to their office and asked after his brother, about five months before he left Turkey. When he was once again called to the police office, the author became afraid and decided to leave the country. The author further states that his wife and children had to leave their home town Cat and are now staying with family in Mersin.

2.4 The author's application for refugee status was considered by the Swiss Refugee Office, which reviewed his submissions against other relevant information obtained by the Swiss Embassy in Ankara, from which it appeared that the author was not personally in danger of detention or persecution. By decision of 12 July 1994 the author's application for refugee status was denied. The author's appeal was considered by the Asylum Review Commission, which confirmed the earlier decision on 28 March 1995.

The complaint

3. The author submits that Turkey is a country where torture is systematically practised and that the human rights situation in the country has been deteriorating over the past years. The author states that he is at risk of being subjected to torture upon his return to Turkey because he is Kurd, because he has been accused of membership in an illegal political party and was put on a blacklist because of this, and because family members are politically active and being persecuted by the authorities. The author further refers to statements from three Kurd activists who have been recognized as refugees in Germany, according to whom the author would be in danger of being detained and tortured if he were to return to his country.

Admissibility considerations

4.1 By note verbale on 22 December 1995 the State party informed the Committee that the author had left Switzerland on 10 August 1995 and that he was no longer within Swiss jurisdiction. It argued that pursuant to rule 107, paragraph 1 (b), of the Committee's rules of procedure, the author lacked the quality of victim for purposes of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4.2 In his submission of 26 March 1996 author's counsel argued that the author only left the territory of Switzerland because he believed that he was in imminent danger of being returned to Turkey, since the Committee had declined to request Switzerland, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, that he not be expelled while the Committee was seized of the case. The author, however, wished to maintain his complaint before the Committee.

5.1 At its sixteenth session, the Committee considered the admissibility of the communication. It noted that, pursuant to article 22, paragraph 1, of the Convention, the Committee may consider a communication from an individual who claims to be a victim of a violation of a provision of the Convention by a State party, provided that the individual is subject to the jurisdiction of that State party, and that the State has declared that it recognizes the Committee's competence under article 22.

5.2 The Committee observed that at the time of the submission of the author's communication, he was under the jurisdiction of the State party and that the communication was properly registered. The Committee needed not to examine the reasons why the author left the jurisdiction of the State party and did not consider his absence from Switzerland a ground for inadmissibility. In the absence of other obstacles to admissibility, and bearing in mind that domestic remedies had been exhausted in Switzerland, the Committee found that it should proceed to an examination of the merits of the claim.

6. On 8 May 1996, the Committee therefore decided that the communication was admissible.

State party's observations on the merits of the communication

7.1 The State party recalls that the author's claim has been duly examined by the Office fédéral des réfugiés (ODR) and by the Commission de recours en matière d'asile (CRA), and that the Swiss embassy in Ankara was requested to inquire into some of the author's allegations. The State party notes that the author bases his claim mainly on the fact that he was suspected of membership of an illegal political party, but that he was acquitted of these charges in 1983, and that he only left Turkey seven years later.

7.2 As to the merits of the communication, the State party submits that its embassy in Ankara has made enquiries which show that the author is not listed by the police, which appears logical since he was acquitted of the charges against him. According to the State party, the author's declarations about the arrests he has undergone since his acquittal are contradictory and vary from instance to instance. As to his political activities after 1983, the State party notes that the author never mentioned these before the ODR and brought it up for the first time in his appeal to the CRA.

7.3 As to the author's accident in 1988, the State party argues that it is very unlikely that this was an attack on him, given the fact that it happened in the middle of the day, in the presence of many witnesses and that it failed. The State party further points out that at first the author declared that the collision was with a police jeep, whereas later he said that it was with a military jeep. According to the State party, the interrogation by the police a week before the accident appears to have been routine procedure and is not linked to the accident.

7.4 As to the circumstances of the author's departure from Turkey, the State party notes that the author states that he left Turkey illegally with a falsified passport. However, the Swiss embassy in Ankara found that the author had been issued a passport in 1991 by the competent authorities in Tunceli, which the author has never mentioned. According to the State party, if the author had left Turkey in the circumstances related by him, the Turkish authorities would not have issued him a new passport.

7.5 As to the author's claim that close family members are politically active and sought by the police, and that he therefore fears torture upon his return to Turkey, the State party contends that the Turkish authorities cannot possibly expect the author to have stayed in close contact with his brother over the past five years, since he was residing outside the country. The State party moreover points out that the author's brother was actually arrested on 4 April 1985 for having a false identity card on him and subsequently released, which seems to indicate that he is not being sought by the authorities.

7.6 As to the author's own political activities, the State party notes that they go back seven years and were subject to a judgement of acquittal. The State party notes that Dev-Yol no longer manifests itself actively and is no longer an object of interest on the part of the Turkish security forces.

7.7 The State party refers to the text of article 3 of the Convention and observes that it does not imply that an automatic danger of torture exists when human rights violations regularly take place in the country concerned, but only that this situation must be taken into account when determining whether a danger exists. The danger must be concrete, that is directly affecting the applicant, and serious, that is highly likely to occur. With reference to the arguments outlined above, the State party is of the opinion that the author of the present communication has not shown the existence of substantial grounds for believing that such a danger exists if he were to return to Turkey.

7.8 With regard to the author's reference to the situation of Kurds in Turkey, the State party argues that reference to a general situation cannot in itself be evidence of the existence of a concrete and serious danger for the author. Moreover, the State party argues that the author could establish himself in another part of Turkey, if he believes that the region of Tunceli is dangerous for him. In this context, the State party recalls that the author's wife and children are now living in Mersin.

7.9 Finally, the State party recalls that Turkey is a party to the Convention against Torture and also has recognized the Committee's competence to examine individual communications under article 22 of the Convention. According to the State party, a finding of a violation by the Committee in the instant case would have serious and paradoxical results.

Counsel's comments on the State party's submission

8.1 Counsel argues that the existence in a country of a pattern of gross, flagrant or mass violations of human rights is in itself an indication that a danger of torture exists. In this context, counsel notes that the State party does not contest that such a pattern exists in Turkey.

8.2 Moreover, counsel refers to his initial communication and argues that individual grounds for believing that the author would be in danger of torture exist. In this context, counsel notes that the State party bases itself on information provided by the Swiss embassy in Ankara. Counsel claims that the information provided by this embassy has been proven wrong on several occasions and therefore questions the reliability of the information provided in the author's case.

8.3 Counsel further recalls that the author originates from Tunceli, and that even the Swiss authorities are of the opinion that no refugee claimant should be sent back to that area of Turkey because of the violence plaguing the region. In its decision in the author's case, the CRA argued that the author could safely return to other parts of Turkey. According to counsel, the CRA has since changed its jurisprudence and now holds that no safe alternatives exist for persons from Tunceli, since the province of origin is always mentioned in the identity cards and since Tunceli has the image to be PKK-friendly; as a consequence, persons from Tunceli are at a particular risk during identity checks.

8.4 As regards the State party's argument that a finding of a violation would lead to paradoxical situation, since Turkey is a party to the Convention against Torture including article 22, counsel argues that Turkey's ratification of the Convention and recognition of the complaints procedure cannot preclude the application of article 3 to Switzerland.

State party's further submission and counsel's comments thereon

9.1 In a further submission, the State party explains that the information in which the embassy has recognized that it has erred in the past concerned declarations that a person was not in possession of a passport, and that this does not affect the information provided by the embassy in the author's case. According to the State party, the CRA has found the information provided by the embassy to be fully reliable. Furthermore, the State party points out that the information furnished by its representations abroad is only one of many elements on which the authorities base their decisions.

9.2 With regard to Tunceli, the State party acknowledges that the CRA has rendered a decision in which it is stated that persons from Tunceli run particular risks during identity checks because of their place of origin. However, the State party argues that the fact that the author is from Tunceli is not in itself sufficient to conclude that he cannot live in security elsewhere in Turkey. In this context, the State party points out that thousands of Kurds have established themselves in the west of Turkey in recent years and that in Istanbul alone more than three million Kurds are registered.

10.1 Counsel notes that the State party has not contested that its embassy in Ankara has provided wrong information in the past. He contends that this wrong information was not limited to declarations about the issuance of passports. Counsel refers to a report published by the Swiss Refugee Aid Organisation, in which it is stated that, although it cannot be contested that the information provided by the embassy is reliable in relatively many cases, mistakes can easily be made and a whole list of cases exists in which the Embassy gave information which was later shown wrong. Counsel also refers to the Committee's Views in communication No. 21/1995 (Ismail Alan v. Switzerland) in which the Committee concluded that the return to Turkey would constitute a violation of article 3 of the Convention, despite information provided by the Swiss embassy in Ankara that the author was not being sought by the police and that no passport prohibition for him existed.

10.2 Counsel explains that the embassy's enquiries are made by an officer of the ODR accredited to the Ministry of Foreign Affairs. According to counsel, the Turkish authorities would certainly not provide any information which could damage their interests. Since most of this information is to be considered as illegally gathered, because of the lack of an international legal basis, counsel argues that this evidence should be treated with circumspection.

10.3 Counsel submits that for Kurds from Tunceli no real possibility exists to settle elsewhere in Turkey, and that they are subject to human rights violations also in the west of Turkey. Counsel refers to the Committee's Views in communication No. 21/1995 (*Ismail Alan v. Turkey*) in which the Committee held that since the police were looking for the author, it was not likely that a "safe" area for him existed in Turkey.

10.4 Finally, counsel submits that the human rights situation in Turkey has not improved, and that Amnesty International, in its annual report of 1996, reports that torture is being used routinely as has also been recognized by the Committee. Counsel also refers to a judgement by the Swiss Federal Court of 11 September 1996, concerning an extradition to Turkey, in which the Court found that serious human rights violations took place in Turkey, and that the extradition should therefore be subject to certain assurances.

Examination of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

11.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that E. A. would be in danger of being subject to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

11.3 The Committee has noted that the State party's argument that the danger to an individual must be serious ("substantial") in the sense of being highly likely to occur. The Committee does not accept this interpretation and is of the view that "substantial grounds" in article 3 require more than a mere possibility of torture but do not need to be highly likely to occur to satisfy that provision's conditions.

11.4 In the present case, the Committee notes that the author's political activities date back to the beginning of the eighties, at which time he was arrested, tortured, prosecuted and acquitted. The author himself states that he did not resume his activities and although was interrogated by the police twice (once in 1988 and once five months before leaving) there is no indication that the police intended to detain him. In this context, the Committee finds also that the author has not provided substantiation for his claim that the collision with a jeep in 1988 was in fact an attack on him. The Committee further notes that the author has not contested the State party's assertion that the authorities in Tunceli issued him a passport in 1991, and that there is no indication that the police are looking for him at present.

11.5 The Committee is aware of the serious human rights situation in Turkey, but recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established.

11.6 The Committee considers that the information before it does not show that *substantial* grounds exist for believing that the author will be personally at risk of being subject to torture if he is returned to Turkey.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

2. Communication No. 57/1996

Submitted by:	P. Q. L. (name deleted) (represented by counsel)
Alleged victim:	The author
State party concerned:	Canada
Date of communication:	10 October 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 1997,

Having concluded its consideration of communication No. 57/1996, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his representative and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is P. Q. L., a Chinese national currently under an order of deportation issued by the Canadian immigration authorities. He alleges that his deportation to China would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as submitted by the author

2.1 P. Q. L. was born in 1974 in Viet Nam. His mother is Vietnamese and his father Chinese. He was three years old when his family fled from the Vietnamese civil war to China. They left China in 1988, and the applicant has been living in Canada with his family since then.

2.2 Since 1990, P. Q. L. has been convicted three times for robbery and sentenced to terms of three months', six months', and, finally, three years' imprisonment. Immigration Canada issued a deportation order on 9 May 1995, stating that P. Q. L. was a danger to public order. He should have been released on 26 April 1996, after serving his sentence of three years' imprisonment, but the immigration authorities ordered that he be kept in jail while awaiting expulsion.

2.3 The author appealed to the Immigration Commission against the deportation order, but the appeal was dismissed on 9 August 1995. He then asked Immigration Canada to review his case, but on 6 May 1996 the Ministry of Immigration concluded that there was no risk of him being subject to torture or inhuman treatment by the Chinese authorities upon return to China. With this, it is submitted, all domestic remedies have been exhausted.

The complaint

3.1 The applicant argues that his life would be in danger should he return to China. He states that there are substantial grounds for fearing that he could be imprisoned and ill-treated by the Chinese authorities because of his past convictions in Canada. He refers to the Chinese Criminal Code, article 7 of which states that any crime outside China's territory is punishable, even if it has already been tried in the foreign country concerned. He further states that acts of robbery are punished by disproportionate sentences such as 10 years or life imprisonment and even the death penalty.

3.2 P. Q. L. also states that he fears persecution by the Chinese authorities because of his Vietnamese origins. He states that minorities' rights are not respected in China.

3.3 The author refers to the existence of systematic violations of human rights in China. In support of that assertion, he submits reports from Amnesty International referring, in particular, to arbitrary imprisonment, the use of torture and ill-treatment of prisoners and the death penalty in China, as well as of reports from Human Rights Watch/Asia and other institutions and to newspaper articles.

3.4 He further states that China is not party to any treaty protecting human rights which would permit him to address any United Nations body, and that it would not, therefore, be possible for him to obtain any protection if his rights were violated in China.

3.5 Finally, the applicant states that China is a completely unknown country to him because he was very young when he came to Canada. The parting caused by the deportation would cause irreparable harm to him and his family. The author produces affidavits from members of his family in support of this allegation.

State party's observations

4. On 4 November 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested it not to expel the author while his communication was under consideration by the Committee.

5.1 By a note dated 14 March 1997, the State party challenges the admissibility of the communication but also addresses the merits of the case. It requests the Committee, should it not find the communication inadmissible, to examine the communication on its merits as soon as possible. It states that the author has not been expelled.

5.2 The State party notes that the communication dwells at length on the disturbing human rights situation in China but does not demonstrate any link between the author's personal situation and the general situation in that country. It recalls that the Committee's case law has established that a disturbing situation of human rights in a country does not in itself constitute sufficient grounds for believing that the author of the communication would be personally at risk of being subjected to torture.

5.3 The State party emphasizes that neither in his communication to the Committee against Torture nor in his submissions to the Canadian authorities has the author claimed to have been tortured, arrested, imprisoned or subjected to ill-treatment in China. He does not claim either to have participated in political activities or to be known to or sought by the Chinese authorities.

5.4 The State party notes that the author says he is afraid that, if he is returned to China, he will be arrested and sentenced to life imprisonment or to death, or that he will be given a disproportionate sentence or subjected to inhuman treatment under article 7 of the Chinese Criminal Code, which deals with the punishment of crimes committed outside China's territory. First of all, the State party notes that protection under article 3 of the Convention is not explicitly provided in cases of cruel, inhuman or degrading treatment, defined by article 16 of the Convention. According to the State party, therefore, article 3 applies only to the most serious forms of cruel, inhuman or degrading treatment, in other words, situations which threaten human dignity. The State party also recalls that the Convention excludes from the definition of torture "pain or suffering arising only from, inherent in or incidental to lawful sanctions". Therefore, imprisonment and the normal conditions of detention do not as such constitute torture as defined by the Convention and interpreted by the Committee. Furthermore, the State party explains that information obtained from the Canadian Embassy in China suggests that the Chinese authorities will not retry a person for offences such as those committed by the author in Canada. In any case, the State party notes that article 7 of the Chinese Criminal Code stipulates that the penalty will be either suspended or mitigated if the person in question has already been punished in the country where the criminal act was committed. Since the author has been punished in Canada for his offences, punishment in China (if any) would be mitigated. Moreover, according to article 150 of the Chinese Criminal Code, theft accompanied by threats, the use of force or similar measures is punishable by 3 to 10 years' imprisonment. According to the State party, sentences of life imprisonment or the death penalty may be imposed only where there are aggravating circumstances, if the victim is seriously injured or killed, none of which apply to the case in question. The State party therefore maintains that there is no objective proof that offences such as those committed by the author of the communication would entail the death penalty or life imprisonment in China. The State also points out that it has not informed the Chinese authorities of the author's convictions.

5.5 The State party notes that the documentary evidence annexed to the author's arguments deals, not with the application of article 7 of the Chinese Criminal Code, but with conditions of imprisonment in China. It does not support a prima facie conclusion that the author would be accused, sentenced or imprisoned.

5.6 The State party notes that the allegations submitted by the author to the Ministry of Immigration are essentially the same as those adduced in support of his communication to the Committee. It explains that the potential danger to the author, should he return to China, was examined by a specially trained official of the Ministry of Immigration, who concluded that the author's particular circumstances did not constitute grounds for believing that he would be personally at risk of being subjected to inhuman treatment or disproportionate sentences or of being executed in China. The Canadian Government refers to the case law of the Human Rights Committee, according to which "it is generally for domestic courts to assess facts and evidence in a particular case, and for appellate courts of States parties to review the assessment of such evidence by the lower courts. It is not for the Committee to question the evaluation of the evidence by the domestic courts unless this evaluation was manifestly arbitrary or amounted to a denial of justice".[a] The State party maintains that no proof of bad faith, manifest error or denial of justice, that would justify the intervention of the Committee, has been established in the case in question.

5.7 In conclusion, the Canadian Government asserts that the communication should be rejected because it does not establish substantial grounds, prima facie and on the merits, for believing that the author's expulsion to China would constitute a violation of article 3 of the Convention. It argues that the mere demonstration of the situation of human rights in a country is not in itself sufficient to establish such substantial grounds. According to the State party, the author's fears that he would be imprisoned or tortured under article 7 of the Chinese Criminal Codes is not substantiated by the evidence submitted to the Committee. The State party submits that this evidence does not provide substantial grounds for believing that article 7 of the Chinese Criminal Code would be applied in his case or that it would be applied in the manner he alleges and with the consequences he suggests. The State party asks the Committee to reject the communication because it does not establish the minimum basis necessary to ensure compatibility with article 22 of the Convention or, alternatively, because it is without merit.

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[a] *Valentijn v. France*, Communication No. 584/1994, para. 5.3, decision dated 22 July 1996.

Comments by the author

6.1 Counsel for the author alleges that the State party has failed to evaluate the author's arguments in an objective and equitable way. According to counsel, international non-governmental organizations have confirmed the existence of arbitrary detention, ill-treatment of prisoners and regular use of torture since 1993.

6.2 Counsel submits that the author would be automatically imprisoned, retried and tortured under the Criminal Code of the Republic of China. Furthermore, since China is not a party to article 22 of the Convention, the author would not have recourse to the Committee as a means of obtaining the necessary protection. Counsel refers to the case of a Chinese national, expelled by the United States after refusal of his application for political refugee status, who was fined on his return to China.

6.3 Counsel recalls that, in its observations on the occasion of the presentation of the report of China, the Committee had expressed concern about: (a) the failure to incorporate the crime of torture into the domestic legal system, in terms consistent with the definition contained in article 1 of the Convention; (b) the assertions, drawn to the attention of the Committee by non-governmental organizations, that torture occurred in China in police stations and prisons; and (c) the failure to provide access to legal counsel to persons at the earliest time of their contact with the authorities and the allegations by some non-governmental organizations that the incommunicado detention is still prevalent in China. Counsel concludes that the author has thus sufficient reason to fear for his life if he is returned to China. She maintains that, even if the facts submitted to the Committee may give rise to certain doubts, the Committee's role is to ensure the safety of the individual concerned.

6.4 Counsel submits that, for the following reasons, the author would be personally at risk if he were returned to China: (a) the author had been deported from Viet Nam to China when he was three years old; (b) the Chinese authorities are obviously aware of the reasons why Canada has requested a travel document in the author's name; (c) the Chinese authorities are also aware of the author's conviction; (d) the author will be turned over directly to the Chinese authorities; (e) under article 7 of the Chinese Criminal Code, another sentence will be imposed; (f) article 150 of the Code states that the sentence may include the death penalty; and (g) torture is common practice in police stations and prisons in China.

6.5 Counsel argues that the author's deportation under current circumstances would violate article 3 of the Convention and that its foreseeable consequence would be to place him in genuine danger of torture.

6.6 In a subsequent letter, counsel denies that the author is a danger to the public and argues that the Canadian authorities' decision on that matter was arbitrary, unreasonable and not supported by any evidence. She also maintains that the Ministry of Immigration did not give the author's file completely independent consideration and that the legislation applied was very recent.

6.7 Counsel notes that the author has been living with his family since 10 February 1997 and submits documents attesting to his rehabilitation and reintegration into society.

Additional observations by the State party

7.1 The State party maintains that the counsel's allegations that the author would be automatically imprisoned and re-sentenced are gratuitous. According to the State party, there is nothing to suggest that the Chinese authorities are aware of the offence committed by the author and there is no evidence to support the application and interpretation of article 7 of the Chinese Criminal Code suggested by counsel. The State party maintains that the author has failed to establish the existence of substantial grounds for believing that he would be imprisoned and subjected to torture if he returned to China.

7.2 With regard to the question of whether the author constitutes a danger to the public, the State party points out that this is not the issue before the Committee.

The Committee's admissibility decision

8. The Committee notes with satisfaction the State party's statement that, in accordance with the Committee's request, the author has not been expelled.

9. Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do by article 22, paragraph 5, subparagraph (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. It has noted that all domestic remedies have been exhausted and that it is not, therefore, precluded from considering the communication under article 22, paragraph 5, subparagraph (b). The Committee has found that there is no other obstacle to the admissibility of the communication and has thus proceeded to consider the case on it merits.

Consideration of the case on its merits

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The issue before the Committee is whether or not the forced return of the author to China would violate the obligation of Canada under article 3 of the Convention not to expel a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

10.3 In reaching its decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be *personally* at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

10.4 The Committee notes that the author claims the protection of article 3 on the grounds that he is in danger of being arrested and retried for the offences which he committed in Canada. However, he does not claim that he has participated in political activities in China, nor that he belongs to a political, professional or social group targeted by the authorities for repression or torture.

10.5 The Committee adds that, according to the information in its possession, there is no indication that the Chinese authorities intend to imprison the author because of his Canadian convictions. On the contrary, the State party has stated that judicial proceedings are not undertaken in such cases. Moreover, the Committee considers that, even if it were certain that the author would be arrested on his return to China because of his prior convictions, the mere fact that he would be arrested and retried would not constitute substantial grounds for believing that he would be in danger of being subjected to torture.

10.6 Furthermore, the Committee refers to the documents submitted by the author, in support of his request for repeal of the decision to revoke his permanent resident status, which allegedly provide proof of his rehabilitation and reintegration into Canadian society. The Committee notes that article 3 of the Convention authorizes it to determine whether return would expose a person to the danger of being subjected to torture but that it is not competent to determine whether or not the author is entitled to a residence permit under a country's domestic legislation.

10.7 The Committee is aware of the seriousness of the human rights situation in China, but, on the basis of the above, considers that the author has not substantiated his claim that he will be personally at risk of being subject to torture if he is returned to China.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the situation as established by the Committee does not reveal a breach of article 3 of the Convention.

[Done in English, Russian and Spanish, the French text being the original version.]

3. Communication No. 59/1996

Submitted by:	Encarnación Blanco Abad (represented by counsel)
Alleged victim:	The author
State party:	Spain
Date of communication:	12 February 1996
Date of decision on admissibility:	28 April 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 1998,

Having concluded its consideration of communication No. 59/1996, submitted to the Committee against Torture by Mrs. Encarnación Blanco Abad under article 22 of the Convention,

Having taken into account all information made available to it by the author of the communication and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Encarnación Blanco Abad,[a] a Spanish citizen. She claims to be the victim of violations by Spain of articles 12, 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

The facts as submitted by the author

2.1 The author was detained along with her husband, Josu Eguskiza, on 29 January 1992 by officers of the Guardia Civil for alleged involvement in activities on behalf of the armed gang ETA. She alleges that she was mistreated between 29 January and 2 February 1992, when she was kept incommunicado under anti-terrorist legislation.

2.2 Brought before Madrid Court of Criminal Investigation No. 44 for preliminary investigation No. 205/92 on 13 March 1992, the author described the mistreatment and torture to which she had been subjected while in the custody of the Guardia Civil. The preliminary investigation had been instituted by the court upon receiving, from the Director of Carabanchel Women's Penitentiary Centre, the report of the doctor who had examined the author and observed bruises upon her entry into the Centre on 3 February 1992.

2.3 On 2 February 1993 the court ordered a stay of proceedings, not considering the incident reported to be a penal offence. Following an appeal, Court No. 44 granted permission on 13 October 1994 to continue with criminal proceedings. The judge handed down an order dated 4 April 1994 to shelve proceedings definitively. The Provincial High

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[a] An earlier communication submitted on behalf of the author and her husband (communication No. 10/1993) was declared inadmissible by the Committee on 14 November 1994 for failure to exhaust domestic remedies.

Court confirmed this decision by order dated 5 September 1995. An application for remedy of *amparo* filed with the Constitutional Court against the Provincial High Court's order was dismissed on 29 January 1996.

State party's observations on the admissibility of the communication

3.1 In its submission of 17 January 1997, the State party pointed out that since 3 February 1992 Mrs. Blanco Abad had been assigned up to seven lawyers to represent and defend her. Despite this, Mrs. Blanco Abad had not formally reported any mistreatment. It submitted that the legal proceedings were set in train by the official transmission to the court of the report of the medical check-up on the author conducted when she entered the Madrid Penitentiary Centre on 3 February 1992. That is, the only legal investigations of alleged mistreatment were instituted not in response to a report by the individual concerned, nor by her family, nor by any of her seven lawyers, but rather as the result of an official procedure enshrined in the regulations to safeguard human rights. Not until 30 May 1994, two years and three months after the event, did the author send a written communication to Court of Investigation No. 44 designating three legal representatives.

3.2 The State party admitted that, with the decision of the Constitutional Court on 29 January 1996, all domestic remedies had been exhausted.

3.3 In reference to article 13 of the Convention, the State party confirmed that by letter of 9 September 1994, Mrs. Blanco Abad's counsel had appealed against the stay of the officially instituted investigations. On 13 October 1994 Court No. 44 annulled the stay of proceedings, allowing them to continue, and called for an expert report to be prepared. Mrs. Blanco Abad did not appeal against the examination authorized; neither did she insist on other investigations. The medical examiner submitted his report on 22 November 1994. On 4 April 1995, Court No. 44 issued an order which gave a detailed account of the medical tests conducted and concluded with the decision to shelve the proceedings definitively.

3.4 The State party submitted that from 9 September 1994, when Mrs. Blanco Abad applied in writing for the stay to be revoked, up to the aforementioned order to shelve the case definitively, the record shows not a single written communication from Mrs. Blanco Abad calling for an investigation or presenting any evidence.

3.5 On 19 April 1995, Mrs. Blanco Abad applied for reconsideration of the earlier decision to shelve the proceedings. On 19 May 1995 Court No. 44 turned the application down. On 5 September 1995 the Provincial High Court in Madrid also rejected the appeal. On 6 October 1995 Mrs. Blanco Abad applied for a remedy of *amparo* before the Constitutional Court, emphasizing the subjective evaluation of the medical examinations. The Constitutional Court considered the judicial decisions in question and pronounced them well-founded, with reasoning that could "not be challenged as manifestly unreasonable or arbitrary".

3.6 The State party pointed out that less than 15 months had elapsed between the reopening of the investigation and the Constitutional Court's decision. The investigation had been reopened for six months, and during those six months Mrs. Blanco Abad neither took any action nor submitted anything at all in writing. The remaining nine months were taken up with the application for reconsideration, the appeal before the High Court and the *amparo* proceedings before the Constitutional Court.

3.7 For the above reasons, it was submitted that Mrs. Blanco Abad's representations, over two years after the event, in investigations instituted in response to an official act, had been promptly and impartially examined. The State party therefore submits that no violation of article 13 of the Convention has occurred.

Comments by the author

4.1 In her comments on the State party's submission, the author stated that by decision of the National High Court dated 26 December 1995, she was sentenced to seven years' ordinary imprisonment and a fine. The judgement observes:

> "The defence initially sought annulment and suspension of the judgement on the grounds of the torture undergone by the accused during detention and while being held at the police stations. The Criminal Division, in view of the abundant and always detailed testimony offered not only by the accused but also by the witnesses called, acknowledges that this might have occurred. Hence its decision to take no account of the statements to the police, which are invalid."

4.2 The author argued that the only evidence against her were the pleas entered by two co-defendants, her husband, Mr. Josu Eguskiza, and Mr. Juan Ramón Rojo, which incriminated her, and that, notwithstanding the view of the National High Court, which found them valid, they were obtained by means of mistreatment and torture, and stemmed directly from the statements to the police that had been declared void.

4.3 The author indicated that on 2 February 1992, she made a statement to the investigating magistrate without being able to consult a lawyer, not even the duty counsel, and that although the official record mentioned the lawyer designated by her, he was not able to attend until the accused's statement had been finalized. The record showed that, responding to the first question put to her, she "neither said nor confirmed in her statement to the Guardia Civil", that she belonged to or had collaborated with ETA. She also related that while on Guardia Civil premises she was mistreated. In particular, she said she had been struck with a telephone directory, had a bag put over her head and electrodes on her body, had been forced to undress and had been threatened with rape. She also claimed to have been forced to stand for long periods against a wall with her arms raised and legs apart while being struck from time to time about the head and genitals, and receiving all manner of insults.

4.4 The author submitted that the medical examinations she underwent while detained incommunicado were superficial checks, and that not even her vital signs were measured. There was no assessment of her nervous state, and she was not asked about the kind of threats and insults to which she had been subjected; the conclusion was that she bore no signs of violence. The doctor put in her report that the detainee reported not having slept, having been beaten, and having been forced to remain naked. Despite this, she concluded that the author was in a suitable physical and mental condition to make a statement. Only on 3 February 1992, in prison, the author said, was any medical evidence of maltreatment found on her person, when three bruises were discovered. In this connection, the author refers to a June 1994 report by the European Committee for the Prevention of Torture illustrating the superficiality of the reports drawn up by doctors attached to the National High Court.

4.5 The author stated that there was no impartial and independent inquiry during the conduct of the preliminary investigation, which was instituted as a result of what she had told the doctor at the penitentiary centre. The three specialized medical reports ordered by the court were clearly at odds over the dating of her bruises by their colour (between four hours and six days), which was crucial to the outcome of the inquiry. She said that no statements were taken from those who might have been responsible for the alleged offence.

4.6 The only investigation that was done after the partial retraction of the stay of proceedings ordered as a result of the remedy filed by the author on 9 September 1994 took the form of a third specialized report by the medical examiner attached to the Court of

Investigation on whether the mistreatment alleged by the author would have left traces that could be detected by a doctor on examination, hours or days later. This last medical report, dated 22 November 1994, stated that "the acts of aggression reported should have left objectively observable injuries in the parts of the body allegedly concerned, particularly the scalp and the genitals, unless the injuries were extremely slight. When a person is beaten unconscious, there will very probably be subsequent injuries, not only to the back and shoulders but to other areas as well." This opinion, combined with the National High Court doctor's lack of rigour in estimating the date of her injuries, led the court to declare the case definitively shelved.

4.7 The author pointed out that the shelving order referred to the impossibility of furnishing proof of any of the acts of aggression recounted, which included blows to the head, kicks to the genitals, hair-pulling and loss of consciousness. She emphasized that the kinds of violence she related do not leave physical marks on the victim, and that neither any of the kinds of psychological and sexual torture she alleged, nor most of the physical torture ("bagging", "hooding" and low-voltage electric shocks), leaves external signs of injury on the body. She submitted that, while a victim's testimony was not in itself always enough to secure a conviction, it was nonetheless true that such testimony, in cases where objective tests were not possible and there was no reason to doubt its veracity, had sufficed in many instances to bring in a guilty verdict when the following stipulations had been met: absence of reasonable doubt, verisimilitude corroborated by circumstantial evidence, and consistency in the charges. She stressed that no statements were taken from the officers on guard, and that the person who had shared the cell with her while she was being held incommunicado had not even been called as a witness to describe how she had been held in custody.

4.8 The author concluded that there had been breaches of articles 12 and 13 of the Convention against Torture. She submitted that current "anti-terrorist" legislation encouraged torture, infringing the basic right to counsel, hampering the collection of evidence that torture had been employed and, ultimately, guaranteeing that torture would go unpunished. In her view, that legislation runs counter to the spirit of article 2 of the Convention against Torture.

4.9 She also submitted that the action taken against her on account of her presumed involvement with an armed gang served to show that the only evidence against her was that obtained under torture and duress from Mr. Eguskiza and Mr. Rojo, in breach of article 15 of the Convention against Torture.

The Committee's decision on admissibility

5.1 At its eighteenth session the Committee considered the admissibility of the communication and ascertained that the same matter had not been, and was not being, examined under another procedure of international investigation or settlement. It observed that the State party had raised no objection regarding admissibility and considered that the available domestic remedies had been exhausted.

5.2 The Committee considered that the communication might raise issues under articles 12 and 13 of the Convention, notably in relation to the period of over a month that elapsed between when the court received the medical report and when it heard the author, and what the court was doing during the almost 11 months that separated the author's statement from the stay of proceedings.

5.3 As to the author's allegation that her conviction violated article 15 of the Convention, the Committee noted the comment in the judgement of the National High Court that the statements made to the police by the accused (including the author) had not been taken into consideration because of the possibility that torture had been used. The author's convention was based on other, uncompromised, voluntary statements made when the accused had been accompanied by counsel of their own choosing. In the circumstances, the Committee found that the author's claim of a violation of article 15 lacked the requisite corroboration, rendering it incompatible with article 22 of the Convention.

5.4 The Committee therefore decided that the communication was admissible inasmuch as it raised issues relating to articles 12 and 13 of the Convention.

Submission of the State party on the merits

6.1 In a submission of 10 November 1997 the State party reiterated that, although the author had been assisted by seven lawyers in the proceedings against her, not a single complaint or report of maltreatment had been presented via the domestic means of redress and that Court No. 44 had initiated the investigation without any application from the individual concerned, who was not even represented in court as an interested party when the compulsory offer of recourse was made to her. This attitude on the part of the author was curious since at the same time she reported the alleged maltreatment to several international bodies. From 9 September 1994, the date on which she requested the revocation of the stay of proceedings, until 4 April 1995, when the shelving order was made, the author did not request any investigation or produce any evidence. Her report of alleged maltreatment was inconsistent with this passive behaviour – not taking any action via the domestic means of redress, not being represented as a party directly involved in the official investigation, and reactivating an investigation but taking no part in it for six months.

6.2 The State party submitted, with respect to article 13 of the Convention, that insofar as this article refers to the right to complain, its application in the present case would be limited to the period beginning with the author's representations to Court of Investigation No. 44 following the order for a stay of proceedings, representations which marked the reopening of the investigation. Less than 15 months elapsed between the reopening of the investigation and the decision of the Constitutional Court. The investigation was in progress for six of these months, and during theses six months the author, assisted by lawyers, did not submit a single document to the Court and did not produce or propose any evidence. In the remaining nine months after the shelving order, the applications to the Court of Investigation, the Provincial High Court and the Constitutional Court were submitted, heard and ruled upon. Accordingly, the State party did not fail to fulfil its obligations under article 13 of the Convention.

6.3 With regard to article 12 of the Convention, the State party submitted that the Spanish system of protection against maltreatment has procedures for safeguarding that right, including in cases, such as the present one, when the party concerned takes no action. When the author entered the Penitentiary Centre on 3 February 1992, she was given a medical examination. The findings of this examination reached the High Court of Madrid on 13 February for distribution. On 17 February they were delivered to Court of Investigation No. 44. On 21 February Court No. 44 issued an order to begin a preliminary investigation and sent an official letter to the Director of the Penitentiary Centre ordering the author to appear on 7 March. She did not appear on that date, and on 9 March a new summons was issued for 13 March. On 13 March the author made a statement and the offer of recourse was made to her. On that same date the Judge authorized an application to Central Court of Investigation No. 2 of the National High Court for official copies of the records of the medical examinations carried out by the forensic medicine staff of that Court. On 30 April, when these copies had still not been received, the Judge sent an urgent reminder. The papers were delivered on 13 May. On 2 June the Judge requested the medical examiner of her Court to make a report; this report was delivered on 28 July. On 3 August the Judge summoned the medical examiner who had attended the author during her detention. On 30 October the Judge set the date of 17 November for receipt of the statement of the medical examiner and also authorized an application for information from the Penitentiary Centre about the time at which the author had been examined and the development of the injuries. On 23 December the Penitentiary Centre delivered the requested information. On 2 February the Judge issued the shelving order.

6.4 These facts show that there was no tardiness or delay in the conduct of the investigation. At no time did the author complain through the domestic channels about delays in the preliminary investigation, either before or after the temporary shelving order, once she had become represented in the proceedings.

Comments by the author

7.1 In her comments on the State party's submission, the author maintains that in the five forensic examinations she underwent during the more than 100 hours for which she was held incommunicado she indicated that she had been subjected to maltreatment. The author encloses copies of the five medical reports which were prepared. In the first it is stated that "she does not mention physical ill-treatment, although she was kept hooded for many hours". According to the second, "she does not mention physical ill-treatment although does speak of threats and insults". In the third "the person concerned says that she is very nervous, has not slept and has not received food. She mentions having received ill-treatment consisting of blows to the head, but there are no signs of violence". The fourth says that "she mentions ill-treatment consisting of blows, but there are no signs of violence". In the fifth "she mentions ill-treatment consisting of blows and of having been kept undressed. No signs of violence are apparent upon examination".

7.2 In her statement to Court of Investigation No. 2 of the National High Court on 2 February 1992, the author spoke of having sustained many blows, having had a bag put over her head until she nearly suffocated, of the use of electrodes, threats and insults, and of having been forced to undress. Notwithstanding, the judge did not automatically arrange for the competent judicial authorities to investigate the complaints.

7.3 The action of Court of Investigation No. 44 consisted in issuing various instructions for the medical reports on the examinations carried out during the period of incommunicado detention, as well details of the examination conducted in prison, to be entered in the record. In addition, two expert appraisals were obtained on 28 July and 20 November 1992, respectively. The first was by the forensic physician of the examining court and the second by the official forensic expert of Court of Investigation No. 2.

7.4 The author indicated that the forensic reports made available by Court of Investigation No. 2 did not include the one for 31 January 1992, which is not to be found in the record and has therefore not been appraised by the experts. The judicial proceedings also failed to determine the exact time of the prison medical examination on 3 February, although the certificate sent by the penitentiary centre to the author's counsel suggests that it took place in the morning.

7.5 The order definitively shelving the proceedings states that "it is necessary to establish, on the one hand, the impossibility of furnishing proof of any of the acts of aggression recounted by the complainant, i.e. blows to the head, the placing of a plastic bag over the head, kicks to the genitals, hair-pulling and loss of consciousness, since they were not confirmed in any medical examination and yet should have left some kind of palpable injury, according to the forensic medical report, and, on the other hand, the existence of other injuries as described for the first time in the medical report of 3 February". It also indicates that it is not possible to reach any conclusion regarding whether the cause of the injuries described "was accidental, intentional or self-inflicted, since the three possibilities are compatible with the objective findings, and the statement of the complainant, which constitutes the other source of information, is not supported by the chronology of the injuries established by the existing medical reports. In view of the impossibility of establishing the cause of the injuries, no offence can be said to have been committed and the proceedings must therefore be shelved".

7.6 This decision was challenged in an appeal based, among other things, on the following arguments:

- With regard to virtually all the acts of aggression described by the author (blows to the head, kicks to the genitals, hair-pulling and loss of consciousness), it was argued that these involved the use of methods intended to leave no physical marks on the victim. Neither the alleged forms of psychological or sexual torture, nor most of the physical torture ("bagging", "hooding" and low-voltage electric shocks) left external signs of injury on the body;
- With regard to the dating of the various bruises, the complainant adduced the theory put forward by the first expert, defining two of them as between two and six days old, while the other two were said to be more recent. The fact that the bruises had not been detected earlier could have been due to a defective physical examination or to the poor light;
- With regard to the value of the victim's testimony considering the lack of objective evidence, reference was made to the case law of the Supreme Court, according to which account should be taken of the absence of reasonable doubt, verisimilitude corroborated by circumstantial evidence, and consistency in the charges. Furthermore, in the course of the police raid on 29 January 1992 many detainees complained of ill-treatment to the forensic physician and the examining magistrate. The complainant therefore called for statements to be taken from the person with whom she had shared a cell while in detention, as well as from the officers on guard.

7.7 On 5 September 1995 the Provincial High Court dismissed the appeal. On 28 September 1995 the author made an application for *amparo* to the Constitutional Court as she considered that the Provincial High Court's decision violated articles 15 (right to physical and moral integrity) and 24 (right to the protection of the courts) of the Constitution, the latter on the ground of failure to allow the submission of evidence proposed by the author, namely, a statement by the prison doctor who noted the injuries and statements by the members of the Guardia Civil responsible for custody.

7.8 On 29 January 1996 the Constitutional Court rejected the application for *amparo*, holding that "the right to bring an action at law does not in turn imply an absolute right to the institution and full conduct of a criminal proceeding, but entails only the right to a reasoned judicial decision on the claims made, which may well be to stay or dismiss the proceedings or, indeed, to declare the complaint inadmissible".

Examination of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

8.2 The committee observes that, under article 12 of the Convention, the authorities have the obligation to proceed to an investigation ex officio, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion. Article 12 also requires that the investigation should be prompt and impartial. The Committee observes that promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.

8.3 The Committee observes that when she appeared before the National High Court on 2 February 1992, after having been held incommunicado since 29 January, the author stated that she had been subjected to physical and mental ill-treatment, including the threat of rape. The Court had before it five reports of the forensic physician attached to the National High Court who had examined her daily, the first four examinations having taken place on Guardia Civil premises and the last on the premises of the National High Court prior to the above-mentioned court appearance. These reports note that the author complained of having been subjected to ill-treatment consisting of insults, threats and blows, of having been kept hooded for many hours and of having been forced to remain naked, although she displayed no signs of violence. The Committee considers that these elements should have sufficed for the initiation of an investigation, which did not however take place.

8.4 The Committee also observes that when, on 3 February, the physician of the penitentiary centre noted bruises and contusions on the author's body, this fact was brought to the attention of the judicial authorities. However, the competent judge did not take up the matter until 17 February and Court No. 44 initiated preliminary proceedings only on 21 February.

8.5 The Committee finds that the lack of investigation of the author's allegations, which were made first to the forensic physician after the first examination and during the subsequent examinations she underwent, and then repeated before the judge of the National High Court, and the amount of time which passed between the reporting of the facts and the initiation of proceedings by Court No. 44 are incompatible with the obligation to proceed to a prompt investigation, as provided for in article 12 of the Convention.

8.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.

8.7 The Committee notes, as stated above, that the author's complaint to the judge of the National High Court was not examined and that, while Court No. 44 examined the complaint, it did not do so with the requisite promptness. Indeed, more than three weeks passed from the time that the court received the medical report from the penitentiary centre on 17 February 1992 until the author was brought to court and made her statement on 13 March. On that same date the court called for Section 2 of the National High Court to provide the findings of the medical examinations of the author by the forensic physician of that court, but more than two months elapsed before on 13 May they were added to the case file. On 2 June the judge requested the court's own forensic physician to report thereon, and this was done on 28 July. On 3 August the judge summoned the forensic physician of Court No. 2 who had conducted the said examinations. This physician's statement was taken on 17 November. On that same date the court requested the penitentiary centre to indicate the time at which the author had been examined in that institution and how the injuries had developed; this information was transmitted to the court on 23 December. Contrary to the State party's contention, as cited in paragraph 6.4, that there had been "no tardiness or delay in the conduct of the investigation", the Committee considers that the above chronology shows the investigative measures not to have satisfied the requirement for promptness in examining complaints, as prescribed by article 13 of the Convention, a defect that cannot be excused by the lack of any protest from the author for such a long period.

8.8 The Committee also observes that during the preliminary proceedings, up to the time when they were discontinued on 12 February 1993, the court took no steps to identify and question any of the Guardia Civil officers who might have taken part in the acts complained of by the author. The Committee finds this omission inexcusable, since a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein, as required by the State party's own domestic legislation (article 789 of the Criminal Procedure Act). Furthermore, the Committee observes that, when the proceedings resumed as of October 1994, the author requested the judge on at least two occasions to allow the submission of evidence additional to that of the medical experts, i.e. she requested the hearing of witnesses as well as the possible perpetrators of the ill-treatment, but these hearings were not ordered. The Committee nevertheless believes that such evidence was entirely pertinent since, although forensic medical reports are important as evidence of acts of torture, they are often insufficient and have to be compared with and supplemented by other information. The Committee has found no justification in this case for the refusal of the judicial authorities to allow other evidence and, in particular, that proposed by the author. The Committee considers these omissions to be incompatible with the obligation to proceed to an impartial investigation, as provided for in article 13 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it reveal a violation of articles 12 and 13 of the Convention.

10. Pursuant to rule 111, paragraph 5, of its rules of procedure, the Committee would wish to receive, within 90 days, information on any relevant measures taken by the State party in accordance with the Committee's views.

[Done in English, French, Russian and Spanish, the Spanish being the original version.]

4. Communication No. 61/1996

Submitted by:	X, Y and Z (names withheld) (represented by counsel)
Alleged victim:	The authors
State party:	Sweden
Date of communication:	27 June 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 6 May 1998,

Having concluded its consideration of communication No. 61/1996, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the authors of the communication, their counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The authors of the communication are X, Y and Z. They are nationals of the Democratic Republic of the Congo (formerly Zaire) and allege a violation by Sweden of article 3 of the Convention against Torture. They are represented by counsel.

The facts as submitted

2.1 Counsel submits that X and his sister Z were politically active in a political opposition party in Zaire, without giving further specifications. He claims that this led to their arrest, imprisonment and torture, without giving more details. It is said that, as a result of her torture, Z is now in poor health. X and Z reportedly fled from prison and escaped to Sweden.

2.2 Y, who is married to X, claims to have faced torture in Zaire as she searched for her husband in different prisons. She too escaped from Zaire to Sweden.

2.3 From the English translations, provided by the State party, of the decisions of the Immigration Board and the Appeal Board in the authors' cases, it appears that X and Z attempted to enter Sweden from Germany on 14 December 1991 in the company of their brother and his wife, both of whom are living in Sweden. X stated that he had travelled to Sweden on his brother's passport, and his sister on the passport of her sister-in-law. They had been imprisoned in Zaire from November 1990 to December 1991, when they were helped to escape. As reason for his imprisonment X stated that he had been involved in organizing a strike in November 1990. Z said that she had helped her brother to hand out leaflets. The Immigration Board passed a refusal-of-entry order with immediate effect, and the authors returned to Germany the same day. The authors then requested asylum in Germany but did not stay to await the outcome of their application. They returned to Sweden on 6 June 1992 and on 13 August 1992 applied for asylum in Sweden. As reason for leaving Germany, X stated that he was afraid and wanted to be with his brother. Z stated that she wanted to be with her brother who was living in Sweden, and also that asylum-seekers were not allowed to stay long in Germany.

2.4 As grounds for asylum, the authors explained that their father was executed in 1978 after having been accused of involvement in a coup against President Mobutu. X was section leader of the youth section of the Mouvement Populaire de la Révolution (MPR) during

1985/86. From 1986 to 1989, he was a member of the political police, then left the MPR and became adviser to the deputy leader in eastern Kinshasa of the People's Revolutionary Party (PRP). He was active in the PRP from January to November 1990, conducting propaganda and distributing leaflets together with his sister, who had become a member of the PRP in May 1990. On 5 November 1990, his sister was arrested at the market place for distributing leaflets. She was subjected to torture. X was subsequently arrested, imprisoned and subjected to torture. On 11 December 1991, X and his sister were helped by a man they call Colonel, who gave them new clothes and drove them to the airport. At the airport, they were met by their elder sister, who gave them Nigerian passports and aeroplane tickets. They flew to Frankfurt via Brussels and were met by the brother who lives in Sweden. At the hearing of her refugee claim, Z presented two statements from the Centre for Torture Survivors, concluding that she is suffering from depression and post-traumatic stress disorder.

2.5 Y entered Sweden on 24 March 1995 and applied for asylum. She could not give any details about her husband's political activities. She stated that when she returned from a visit to north-eastern Zaire, her husband had disappeared and friends told her that he had been arrested. When looking for her husband at the defence staff prison in 1992, she was detained and imprisoned for two months. She was interrogated about her husband's political activities and tortured. She managed to escape and went to stay with an aunt in Bukavu, north-eastern Zaire. In June 1993, she received a letter from her husband through a cousin in Belgium. In December 1994, her aunt's house was searched and her husband's letter found. Y was returned to prison and subjected to torture again. A friend arranged her escape on 21 March 1995. She was given a passport in another person's name and left for Paris. There she was met by someone who travelled to Sweden with her and then took her travel documents.

The complaint

3.1 The authors claim that their return to the Democratic Republic of the Congo would constitute a violation of article 3 of the Convention against Torture by Sweden. The authors fear that if they were to return to the Democratic Republic they would be treated in the same way in which they have been treated in the past, stating that: their political party is banned; the leaders of the party are still in exile; and the political situation in the country remains essentially the same as when they left. They submit that their personal background shows that they personally would be at risk of torture if returned to the country and that there is, in addition, in the country a consistent pattern of gross and massive violations of human rights.

The State party's observations

4. On 22 November 1996, the Committee acting through its Special Rapporteur for New Communications, requested the State party not to expel or deport Z to the then Zaire while her communication was under consideration by the Committee.

5.1 By submission of 11 February 1997, the State party informs the Committee that the Immigration Board has suspended the authors' expulsion, following the Committee's request.

5.2 Regarding the domestic procedure, the State party explains that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens Act. For the determination of refugee status there are normally two instances, the Swedish Immigration Board and the Aliens Appeals Board. In exceptional cases, an application is referred to the Government by either of the two boards. In this context, the State party explains that the Government has no jurisdiction of its own in aliens cases not referred to it by either of the two Boards and that not referred cases are determined by the Boards independently and with no interference by the Government. The Swedish Constitution, chapter 11, section 7, prohibits any interference of the Government, Parliament or any other public authority in the decision making of an administrative authority. The State party submits that, in this respect, an administrative authority, such as the Immigration Board and the Aliens Appeal Board, enjoys the same independence as a court of law.

5.3 Chapter 8, section 1, of the Act corresponds with article 3 of the Convention against Torture and states that an alien who has been refused entry or who shall be expelled may never be sent to a country where there is firm reason to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture, nor to a country where he is not protected from being sent on to a country where he would be in such danger. Further, under chapter 2, section 5, subsection 3, of the Act, an alien who is to be refused entry or expelled, can apply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion. Applications under section 5 are dealt with by the Aliens Appeal Board.

5.4 Under chapter 8, section 10, of the Act, the Immigration Board and the Aliens Appeal Board may stay the enforcement of an expulsion order when particular reasons exist for doing so. Pursuant to Chapter 8, Section 13, of the Aliens Act, the police authority is to inform the Immigration Board if it finds that enforcement cannot be carried out. As of 1 January 1997, the Act provides a legal basis for complying with an interim request made by an international judicial organ not to deport an asylum seeker.

6.1 Regarding admissibility of the communication, the State party is not aware of the present matter being or having been investigated by another procedure of international investigation. It further submits that the authors can apply, under chapter 2, section 5 b, of the Aliens Act, for a re-examination, if new circumstances exist.

6.2 Finally, the State party submits that the communication is inadmissible as being incompatible with the provisions of the Convention.

7.1 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the case of *Mutombo v. Switzerland*[a] and *Kisoki v. Sweden*,[b] and the criteria established by the Committee, first, that the general situation of human rights in a country must be taken into account, but the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in and of itself determinative; second, that the individual concerned must personally be at risk of being subjected to torture; and, third, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

7.2 With reference to the general situation of human rights in Zaire, the State party acknowledges that the situation is far from acceptable, and that the State is losing control. The State party submits, however, that the situation with respect to political persecution has slightly improved since the middle of 1994. The State party submits that at present there is no systematic persecution in Zaire of members of the Union pour la Démocratie et le Progrés Social (UDPS), and that, on the contrary, a great number of opposition parties act without being at risk of being exposed to persecution. Furthermore, according to recent information provided by the Office of the United Nations High Commissioner for Refugees

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[a] Communication No. 13/1993, Views adopted on 27 April 1994.

[b] Communication No. 41/1996, Views adopted on 8 May 1996.

(UNHCR), only those playing an active political role at the national level risk being harassed and not ordinary active members of a party or local party leaders. Especially members of the UDPS appear to be free from persecution at the moment.

7.3 The State party submits that it is a different matter that members of the army and of the security forces may act arbitrarily and commit atrocities during interrogation of detainees. But in the State party's view the risk for a returned asylum seeker of being subjected to torture is not significantly greater than for the population in general.

7.4 The State party refers to its own legislation which reflects the same principle as that of article 3 of the Convention. The State party's authorities thus apply the same test as the Committee in deciding on the return of a person to his or her country. The State party recalls that the mere possibility that a person be subjected to torture in his or her country of origin does not suffice to prohibit his or her return as being incompatible with article 3 of the Convention. The risk must be substantiated having regard to the circumstances and in particular to the asylum seekers' personal conditions.

7.5 In respect of its assessment whether or not the authors would be personally at risk of being subjected to torture when returned to the Democratic Republic of the Congo, the State party relies on the evaluation of the facts and evidence made by its immigration board and the appeal board, which have decided that there are no impediments to deporting the authors to the country. In particular, the Board considered that the PRP, the political party of which X claimed to be a sympathizer, was now allowed in the Democratic Republic and that he was of no particular interest to the Congolese authorities. Regarding his sister, the Board was uncertain of her identity, and noted that the medical statement submitted did not exclude that the findings could have other explanations than those claimed. Finally, Y had never been politically active and did not submit any medical evidence to substantiate her claims of having been subjected to torture.

7.6 The State party further points out that the authors' stories contain many inconsistencies and questionable information. Z changed her account of political involvement on several occasions (not being involved, recruiting new members, and later being vice-treasurer). The account of the circumstances of the arrest of X and Z also differed, and they also submitted conflicting information about how they travelled to Sweden. There is also conflicting information about when X left the former Zaire, and the State party points out that X and his sister have indicated different languages as their mother tongue.

7.7 In the State party's view there is a general lack of credibility attached to the information which the authors of the communication have submitted to the Swedish authorities. The State party seriously questions whether the authors are not abusing the system set up under the Convention against Torture. The State party submits that it has not been possible to ascertain any of the facts invoked by the authors in support of their applications for asylum. In view of the fact that the authors carried no valid travel documents when arriving in Sweden, it cannot be excluded, according to the State party, that they had been residing somewhere else in Europe before entering Sweden. The State party submits that it would have been possible for X and Z to remain in Germany awaiting the examination of their application for asylum in that country.

7.8 The State party therefore maintains that the authors have not substantiated that they would be personally at risk of being subjected to torture if they were to return to the Democratic Republic of the Congo. It has not been substantiated that they are wanted by the Congolese authorities or that they would be of particular interest to those authorities. The risk they will run if returning to the country is not significantly greater than for the population in general in the Democratic Republic. The State party further emphasizes that the authors are free to leave Sweden in order to go to some other country where they can obtain a residence permit.

7.9 The State party concludes that the authors have not shown the existence of substantial grounds for believing that they would be in danger of being subjected to torture if the expulsion order were to be carried out. In this context, the State party points out that no sufficient evidence has been submitted which shows that their alleged political activities render them a target of the Congolese authorities at this point in time. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

Counsel's comments

8.1 In his comments on the State party's submission, counsel for the authors states that the political situation in Zaire is very difficult at present, since different groups are fighting each other and the Government has lost control of great parts of the country. According to counsel, people returning from abroad risk arrest and torture upon arrival.

8.2 With reference to the jurisprudence of the European Commission of Human Rights, counsel states that the possibility of lodging a new application with the Aliens Appeal Board does not affect the admissibility of the communication.

8.3 As to the merits, counsel submits that a consistent pattern of gross, flagrant or mass violations of human rights exists in the Democratic Republic of the Congo. He adds that the authors are at personal risk of being tortured if returned to the country. In this context, counsel claims that the political party to which X and Z belong is still forbidden in the Democratic Republic. Counsel states that the changes made in the political structure in the Democratic Republic make it very difficult to predict the danger of their return.

8.4 Regarding Y, counsel points out that she has been tortured and submits that if one of her torturers were to see her again, he may kill her or torture her to prevent her from telling what earlier had happened to her.

8.5 Regarding the UNHCR information, counsel states that he has been told by UNHCR representatives that this information is not consistent with the policy of the UNHCR central office and should thus not be used.

8.6 Counsel argues that the Immigration Board and the Aliens Appeal Board do not examine the real reasons for a person to seek asylum, but only look into the question of credibility.

8.7 Regarding the State party's argument that the authors have provided different and contradictory information, counsel claims that they have never been given an opportunity to give a full statement, which explains the discrepancies. Counsel further argues that even if some information is inconsistent, the important question is whether they will be at risk of being treated in violation of the Convention against Torture when returned to the Democratic Republic.

8.8 Concerning the lack of medical evidence for X and his wife, counsel states that, since no one questioned the fact that they had been tortured, it was not necessary to provide medical evidence. Medical evidence for the sister was only provided, because she suffered from the consequences of the torture so much that she had to see a specialist.

9.1 In a further letter, counsel for the authors states that he had filed a new application with the Aliens Appeal Board, on the basis of the uncertain new political situation in the Democratic Republic of the Congo, and that on 18 June 1997, the Board stopped the execution of the decision to expel the authors.

9.2 By note of 2 February 1998, the State party informed the Committee that the Aliens Appeal Board, on 22 January 1998, rejected the authors' new application. The Board concluded that neither the situation in the Democratic Republic of the Congo, nor the personal situation of the authors entailed any risk of persecution, torture or inhuman or degrading treatment if they were to return. In respect of the political situation in the former Zaire, after the overthrow of the Government of President Mobuto in spring 1997, the Board considered that there existed no general impediments to enforcing decisions of expulsion to the Democratic Republic of the Congo. Moreover, the Board noted that the PRP, the party to which the authors claim to belong, is part of the Alliance of Democratic Forces for the Liberation of Congo-Zaire, led by Mr. Kabila, the new head of state of the Democratic Republic of the Congo. For this reason, the Board found that no personal impediments existed to the enforcement of the decision of expulsion in the authors' case. The State party states that it shares the Board's view.

9.3 By letter of 22 April 1998, counsel for the authors admits that the party to which the authors belong is the party to which the current head of State, Kabila, belongs. He argues, however, that the situation has changed since the authors left their country, and that the authors do not agree with the dictatorship imposed by President Kabila. In this context, he notes that the authors participated in a demonstration in front of the American, English and French embassies to protest against the arrest of Mr. Thsisekedi, the leader of the UDPS. The authors are convinced that the Government of the Democratic Republic of the Congo is aware of their presence at the demonstration and that they will risk torture if they were to return. In this context, they also submit that their father was an active supporter of ex-president Mobuto and that they speak Lingala, a language associated with supporters of President Mobutu. Further, they claim to risk ill-treatment because they are not in the possession of identification documents.

Issues and proceedings before the Committee

10. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee finds that no further obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

11.1 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the authors would be in danger of being subject to torture upon return to the Democratic Republic of the Congo. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be *personally* at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

11.2 The Committee notes that the authors have claimed that they have been subjected to torture in the past, and that Y has provided medical evidence showing that she suffers from a post traumatic stress disorder. The Committee observes that past torture is one of the elements to be taken into account by the Committee when examining a claim concerning article 3 of the Convention, but that the aim of the Committee's examination of the communication is to find whether the authors would risk being subjected to torture now, if returned to the Democratic Republic of the Congo.

11.3 The authors' fear of being subjected to torture was originally based on their political activities for the PRP. The Committee notes that the party is part of the alliance forming the present Government in the Democratic Republic of the Congo, and that the authors' fear thus appears to lack substantiation.

11.4 In their latest submission, the authors have raised other grounds for fearing to be subjected to torture upon return to their country. In this context, they have stated that they disagree with the present Government's policy and that they have participated in a demonstration against the arrest of a political leader in the Democratic Republic of the Congo. According to the Committee's jurisprudence,[c] activities in the receiving country should also be taken into account when determining whether substantial grounds exist for believing that the return to their country would expose the authors to a risk of torture. In the instant case, however, the Committee considers that the authors' activities in Sweden are not such as to substantiate the belief that they would be in danger of being subjected to torture.

11.5 The Committee is aware of the serious situation of human rights in the Democratic Republic of the Congo, as *inter alia*, reflected by the report of the Special Rapporteur of the Commission on Human Rights. The Committee observes however, that UNHCR has not issued a recommendation to suspend the return of rejected asylum seekers to the Democratic Republic of the Congo in view of the current situation and accordingly that no objective impediments exist to the return of failed refugee claimants to the Democratic Republic of the Congo. The Committee recalls that, for the purpose of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the above considerations, the Committee is of the opinion that such risk has not been established.

11.6 In the light of the above, the Committee considers that the information before it does not show that substantial grounds exist for believing that the authors will be personally at risk of being subject to torture if they are returned to the Democratic Republic of the Congo.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

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[c] See Committee's Views in communication No. 34/1995 *(Aemei v. Switzerland)*, adopted on 9 May 1997.

5. Communication No. 65/1997

Submitted by : I. A. O. (name withheld) [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 21 March 1997

Date of admissibility decision: 25 November 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 6 May 1998,

Having concluded its consideration of communication No. 65/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is I. A. O. (born on 29 May 1966), a Djibouti citizen and member of the Afar ethnic group, currently seeking asylum in Sweden. He claims that his return to Djibouti would constitute a violation of article 3 of the Convention against Torture by Sweden. He is represented by the Advisory Centre for Asylum Seekers and Refugees.

Facts as presented by the author

2.1 The author is described as a publicist who has written articles criticizing the political situation in Djibouti, in particular the mistreatment of the Afar ethnic group by the politically dominant Issa ethnic group. He maintains that since coming to Sweden he has continued his publicist work critical of the current government, and is thus still considered to be a significant enemy to the regime.

2.2 He states that he became politically active when he was a student living in Morocco between 1987 and 1989, and that he expressed his views writing for a student magazine. In 1989, he moved to the Libyan Arab Jamahiriya to continue his studies. While there he states that he organized supply transports, financed by Libyan interests, to the Front for Restoration of Unity and Democracy (FRUD, previously AROD)in Djibouti.

2.3 The author states that he returned to Djibouti on 14 January 1991 and that he was stopped and arrested by security service agents after leaving the airport. He says that he was taken to the Nagad prison and interrogated regarding his involvement with the Afar-led FRUD. He says that he was then taken to the interrogation centre Villa de Christianos where he was tortured to force a confession regarding his political associations and activities. He claims to have been subjected to electrical shocks and beatings with a nail-studded stick. Because of his weakened physical condition resulting from this treatment, he says that the security service left him outside of a medical clinic. It is certified that he was hospitalized from 20 to 30 January 1991.[a]

2.4 According to the author, upon his release from the hospital, on 30 January 1991, he was picked up for more interrogation. This time he was accused of betraying the Government and was interrogated about his political activities abroad. He alleges that he was tortured by being forced to sit on a glass bottle with a broken bottle neck, having a wire inserted into his penis, having heavy weights hung from his penis and scrotum, being burned with cigarettes and cigars, being cut with a razor, and being forced to lay in a bathtub with water dripping at a fixed point on his head. He says that he was released after nine days of imprisonment and it is certified that he was hospitalized from 11 to 20 February 1991.

2.5 He claims that he was arrested, for an unspecified reason, on 14 April 1991 and held in prison until 1 July 1991. While he says that he was not tortured during this imprisonment, he claims that he was kept for a period of time in a cell flooded with sewage water. He says that he was interrogated throughout this incarceration about his political activities, and was offered a diplomatic position abroad in exchange for altering his political views.

2.6 The author claims that he was arrested again on 7 August 1991 while helping to unload a delivery of weapons intended for FRUD, and that he was held in detention until 20 August 1991. He states that during this detention he was interrogated and beaten frequently.

2.7 During his periods of freedom the author claims that he was under surveillance by the security service, that he was interrogated several times, and that his home was searched.

2.8 He states that he was able to obtain a national passport and a Swedish visa with assistance of a lawyer and of Abdalla Kamil, the former Prime Minister of Djibouti. He claims that Kamil also negotiated with the Djibouti airport police to facilitate his passage through immigration control. He left Djibouti on 25 September 1991 arriving in Stockholm via Moscow on 26 September 1991. Upon his arrival in Stockholm, he immediately presented himself to the airport police and requested Swedish asylum.

2.9 On 4 and 5 December 1991 he had a more comprehensive interview with police authorities at Carlslund Refugee Reception Centre. At the time he described his political activities, the actions against him by the Djibouti Government and his detentions. He claims that the investigating officer did not question him about torture so he only briefly mentioned the subject. The author's counsel notes that his client was not represented by counsel at this interview.

2.10 It is submitted that the author was granted legal aid and a counsel to assist him in the asylum process. The Immigration Board rejected the author's application on 16 November 1992 and ordered that he be expelled from Sweden. It is submitted by counsel that the Board, which had been given copies of his political writings, did not find the character of the author's political involvement such that his fear of persecution was well-founded.

2.11 The Immigration Board decision was appealed on 14 December 1992 to the Aliens Appeals Board. It is stated that the appeal underscored the author's torture experiences and included a certificate from Dr. Hans Söderlund, dated 17 February 1993, corroborating his claims. According to the author, the medical report states that the author exhibited emotional distress when describing his experiences in Djibouti, and identifies scars which could be the result of physical violence.

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[a] A certificate dated 2 September 1995, signed by Dr. Bourhan of the Clinique Ibn-Sina, states that the author was hospitalized twice, for the dates 20–30 January and 11–20 February 1991, as a result of the violence inflicted upon him during incarceration.

2.12 The appeal was ultimately rejected on 29 September 1995. It is submitted that the Aliens Appeals Board based its decision in part on information from the United States Department of State's *Djibouti Country Report on Human Rights Practices* which reported that the general political situation in Djibouti had improved since the accord between FRUD and the Djibouti Government in December 1994.[b] It is submitted by his counsel that the Board also found the author's account of his personal situation not credible, doubting that the Djibouti authorities could know about his activities against the regime and still release him from prison several times, and doubting that he would be offered a diplomatic post if the authorities considered him to be a great threat to the regime. Following the rejection of his appeal the author went into hiding.

2.13 It is stated that, on 6 September 1996, the author submitted a new application for a residence permit to the Aliens Appeals Board. Included was documentation of forensic and psychiatric examinations at the Centre for Torture and Trauma Survivors (*Centrum för Tortyr och Traumaskadade* – CTD) and a certificate of his hospitalization in 1991 at the Ibin-Sina clinic.[c] According to the psychiatric examination the author exhibits symptoms of post-traumatic stress disorder. The forensic examination identifies several scars which are consistent with his torture claims.

2.14 It is stated by counsel that on 16 September 1996 the Aliens Appeals Board revoked the deportation order against the author and granted him a personal hearing on 7 November 1996 where he was represented by counsel. According to the author, on 10 December 1996, the Board rejected his new application and reinstated the deportation order. It is submitted that the Board supported its decision by citing inconsistencies in statements by the author about how he received his injuries and from the fact that he had waited until the rejection of his first application to document his torture history for the Board. Further, it is stated that the Board did not find credible his assertions of continued political writing since arriving in Sweden.

2.15 On 1 January 1997, the author resubmitted his application requesting that it be reviewed in the context of changes to the Swedish Aliens Act, effective 1 January 1997. The author's counsel states that on 10 February 1997 the Board rejected this application holding that there could be no reconsideration of previously examined circumstances, and further that the new legislation was of no significance to the case.

2.16 His counsel indicates that inconsistencies in the author's story have been attributable to post-traumatic stress disorder, and that his delay in recounting the torture incidents was attributable to illness (tuberculosis) and cultural differences between himself and the Swedish interrogators at the airport and later, at the Carlslund Refugee Reception Centre.

The complaint

3.1 The author claims that the standpoint of the Aliens Appeals Board on the political situation in Djibouti is a misinterpretation of the actual circumstances. According to him, the peace agreement referred to is only between the regime and a minor faction of FRUD, and the overwhelming part of FRUD continues its political and military struggle against the regime. He asserts that politically active Afars are arrested on a large scale and that they suffer torture and other inhumane treatments. Further, he claims that the regime also takes actions against the ordinary Afar population, for example, subjecting Afars to constant police surveillance.

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[b] In 1994, the Djibouti Government and FRUD signed a peace accord ending three years of civil war. In March 1995, FRUD was legalized and in 1996 it was registered as a political party.

[c] Psychiatric record, dated 9 September 1996, in Swedish, by Dr. Hans Peter Sondergard of CTD. Forensic medical record, dated 9 September 1996, in Swedish, by Dr. Erik Edston of CTD. Copies of records provided.

3.2 The author maintains that since coming to Sweden he has continued his publicist work against the current government, and is thus considered to be a significant enemy to the regime. He states that the Djibouti authorities are aware that he is staying in Sweden, and are unhappy with his depiction of Djibouti in his writings. Therefore, he contends that he will face detention, torture and other cruel and degrading treatment if he is forced to return to Djibouti.

State party's observations

4. On 14 April 1997, the Committee, acting through its Special Rapporteur for New Communications, transmitted the communication to the State party for comments and requested the State party not to expel the author while his communication was under consideration by the Committee.

5.1 By submission of 1 July 1997, the State party challenges the admissibility of the communication but also addresses the merits of the case. It requests the Committee, should it not find the communication inadmissible, to examine the communication on its merits as soon as possible. It informs the Committee that the Immigration Board has stayed the enforcement of the expulsion order, pending the Committee's final decision in the matter.

5.2 As regards the domestic procedure, the State party explains that the basic provisions concerning the right of aliens to enter or to remain in Sweden are contained in the 1989 Aliens Act. For the determination of refugee status there are two instances, the Swedish Immigration Board and the Aliens Appeals Board. In exceptional cases, the application can be referred to the Government by either of the two Boards. In this context, the State party explains that the Government has no jurisdiction of its own in cases not referred to it by the Boards. Such cases are determined by the Boards independently. The State party clarifies that the Swedish Constitution prohibits any interference by the Government, the Parliament or any other public authority in the decision making of an administrative authority in a particular case. According to the State party, an administrative authority as the Immigration Board or the Aliens Appeals Board enjoys the same independence as a court of law in this respect.

5.3 As of 1 January 1997, the Aliens Act has been amended. According to the amended Act (chap. 3, sect. 4, in conjunction with sect. 3) an alien is entitled to a residence permit if he or she experiences a well-founded fear of being subjected to the death penalty or to corporal punishment or to torture or other inhuman or degrading treatment or punishment. Under chapter 2, section 5(b), of the Act, an alien who is refused entry, can apply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion. New circumstances cannot be assessed by the authority ex officio but only upon application.

5.4 Chapter 8, section 1, of the Act provides that an alien who has been refused entry or who shall be expelled may never be sent back to a country where there is a reasonable cause to believe that he would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment, nor to a country where he is not protected from being sent on to a country where he would be in such a danger.

5.5 As to the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international instance of international investigation or settlement. The State party explains that the author can at any time lodge a new application for re-examination of his case to the Aliens Appeals Board, based on new factual circumstances. Finally, the State party contends that the communication is inadmissible as being incompatible with the provisions of the Convention.

5.6 As to the merits of the communication, the State party refers to the Committee's prior jurisprudence, and the criteria established by the Committee. In this context, the State party submits that the relevant provisions in the Aliens Act reflect exactly the same principle as laid down in article 3 of the Convention. The State party recalls that the mere possibility that a person will be subjected to ill-treatment in his or her country of origin does not suffice to prohibit his or her return as being incompatible with article 3 of the Convention.

5.7 In the instant case, the Immigration Board considered that the information submitted concerning the author's political position and the extent and nature of his alleged activity did not support the finding that he had cause for a well-founded fear of persecution. In its rejection of the author's appeal, the Aliens Appeals Board found that the information submitted by the author lacked credibility and moreover, that, even if the information was accepted as truthful, it did not show that he would risk being subjected to persecution or that he would be entitled to asylum. The author's new application was rejected by the Aliens Appeals Board on 10 December 1996. It found unsubstantiated the author's claims that he had not been able to understand the interpreters used at the hearings and that his counsel had not devoted enough time to the case. It further noted that the author has submitted contradictory information about the times he had spent in detention and about the cause of the marks on his body.

5.8 The State party emphasizes that the Aliens Appeals Board had the benefit of an oral hearing and that it based its opinion also on its first hand impression of the author. According to the State party, this gives the Board such an advantage that the Committee should allow the Board a certain margin of appreciation when it subsequently evaluates the Board's decision.

5.9 The State party bases itself on the findings of the Immigration Board and Aliens Appeals Board and points out inconsistencies in the author's story in relation to the periods of detention and argues that it is unlikely that the author was offered a high diplomatic post if he was perceived as a threat to the Government. According to the State party, the inconsistencies and peculiarities of the author's story significantly affect its veracity and on the credibility of his claims, including the claim that he has been tortured. On the basis of the above, the State party contends that the evidence presented by the author is insufficient to demonstrate that the risk of being tortured is a foreseeable and necessary consequence of his return to Djibouti. According to the State party, there is no evidence that the author's alleged political activities render him a target of persecution by the Djibouti authorities.

5.10 By way of conclusion, the State party notes that the Committee has found violations of article 3 in all the cases against Sweden which it so far examined on the merits. In this context, the State party points out that its immigration authorities have a considerable experience with the examination and determination of cases of this nature, involving difficult assessments as regards the credibility of the information submitted. Moreover, they have a considerable knowledge about the human rights situations in different countries. The State party also recalls that the test applied by the European Commission of Human Rights under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is in principle the same as the one applied by the Committee under article 3 of the Convention against Torture. However, the European Commission has declared inadmissible most complaints against Sweden as manifestly ill-founded.

5.11 The State party expresses its concern about a possible development of different standards under the two human rights instruments of essentially the same right. The State party argues that diverging standards in this respect would create serious problems for States which have declared themselves bound by both instruments. Problems would arise when States attempt to adapt themselves to international case-law, if this case-law is inconsistent. According to the State party, inconsistent case-law may also have serious detrimental effects on the overall credibility of the human rights protection system at international level.

Counsel's comments

6.1 In his comments on the State party's submission, counsel points out that Djibouti is not a party to the Convention against Torture and that consequently its Government is not even willing to give an image of respecting human rights. According to counsel, this is an additional reason for believing that the author will be tortured upon his return.

6.2 Counsel explains that there is no possibility of a further new application to the Aliens Appeals Board, because no factual new circumstances exist in the author's case. He maintains that all domestic remedies have been exhausted.

6.3 As to the merits, counsel contends that the human rights situation in Djibouti raises serious concerns. He explains that the political situation is characterized by the tension between the two main ethnical groups, the Issas and the Afars. After many years of struggle, a peace treaty between FRUD and the Government was signed in December 1994, but according to counsel, a large majority of FRUD continued its political resistance. Counsel submits that the Government discriminates against the Afar population in general and oppresses political active opponents in particular. According to counsel, the situation in Djibouti amounts to a consistent pattern of gross, flagrant, or mass violations of human rights.

6.4 Counsel acknowledges that a serious human rights situation as such does not constitute a sufficient ground for determining that a person will be at risk of being tortured if returned. According to counsel however, in Djibouti prerequisite political and social conditions exist that make it indeed likely that torture would occur.

6.5 Counsel acknowledges that the Swedish legislation reflects essentially the same test as article 3 of the Convention, but argues that there is no indication that this test was indeed applied in the author's case.

6.6 Counsel explains that the author has been confusing what happened at which hearings, and that this explains the inconsistencies of his claims concerning the interpretation. Counsel states that the author suffers psychological trauma and that his confusion is understandable and cannot be considered as affecting his credibility. Counsel maintains that the time spent by the author's legal representative in preparation of the hearing of his case before the Immigration Board was minimal and that his case was therefore not fully presented.

6.7 As regards the inconsistencies in the author's story, counsel explains that these are caused by the difficulties the author was facing in trying to adapt to a new society, whereas suffering the consequences of torture. Counsel contends that the authorities lacked understanding for the author's situation. He stresses that the author suffers from a post-traumatic stress disorder and that this explains the inconsistencies in his story and his gaps of memory. In this context, counsel refers to the Committee's prior jurisprudence.

6.8 As regards the offer to give him a diplomatic post, counsel explains that the Government in Djibouti has on numerous occasions tried to win over opponents by offering them high posts and that it needs educated collaborators.

6.9 Counsel refers to the medical evidence and submits that there is no doubt that the author has been tortured. He asserts that in view of the past, continued detention, torture and other ill-treatment is the necessary and foreseeable consequence of the author's forced return to Djibouti.

6.10 As regards the State party's argument that its immigration authorities have a lot of experience in handling asylum cases, counsel submits that the authorities tend not to accept incoherent and contradictory statements from persons who have been subjected to torture, although testimony from experts in the field demonstrate that these inconsistencies are the result of the effects of the torture on the person. According to counsel, most immigration officials have little understanding of these problems and don't follow regular training programmes. As regards the availability of information, although information from non-governmental organizations is available, officials prefer to rely on information available through diplomatic channels. Counsel concludes that the standard applied by the State party is not as high as it claims.

6.11 As regards the State party's argument in relation to possible diverging case-law by the European Commission of Human Rights and the Committee against Torture, counsel submits that these bodies are independent of each other and work in a different context. Counsel disagrees with the State party's concerns and states that, if a different standard is applied by the two bodies, all the State party has to do is to apply the stricter of the two.

The Committee's admissibility decision

7. At its nineteenth session, the Committee examined the admissibility of the communication. It noted with appreciation the information given by the State party that the Immigration Board has stayed the enforcement of the expulsion order against the author, pending the Committee's final decision.

8. The Committee ascertained, as it was required to do under article 22, paragraph 5(a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement. The Committee was further of the opinion that all available domestic remedies had been exhausted, in view of the fact that no new circumstances existed on the basis of which the author could have filed a new application with the Aliens Appeals Board. The Committee found that no further obstacles to the admissibility of the communication existed.

9. The Committee noted that both the State party and the author's counsel had forwarded observations on the merits of the communication, and that the State party had requested the Committee, if it were to find the communication admissible, to proceed to the examination of the merits of the communication. Nevertheless, the Committee considered that the information before it was not sufficient to enable it to adopt its Views.

10. In particular, the Committee wished to receive from the author's counsel more precise and detailed information concerning the character and frequency of the author's publications, the nature of his political activities as well as his reasons to believe that he will be subjected to torture upon his return to Djibouti. Likewise, the Committee wished to receive information from the State party concerning its statement that the human rights situation in Djibouti had improved since the peace accord of December 1994, and how this would affect the author's situation if he were to return.

11. Accordingly, on 20 November 1997, the Committee against Torture decided that the communication was admissible, and requested the State party and the author's counsel to submit their observations on the above questions so as to allow the Committee to examine the merits of the communication at its next (twentieth) session.

Parties' replies to the Committee's decision on admissibility

12.1 By note of 28 January 1998, the State party points out that it never suggested that the human rights situation in Djibouti had improved since the peace accord of 1994, but, on the contrary, that the general situation of human rights in Djibouti leaves much to be desired. It recalls that its arguments concerning the merits of the author's communication were mainly based on his credibility rather than on the human rights situation in Djibouti. The State party refers to its earlier submission and maintains that the inconsistencies and peculiarities in the author's story impact on its veracity and credibility.

12.2 The State party points out that, although the situation of human rights in Djibouti is far from satisfactory, the freedom of the press in the country is generally respected, and that the opposition issues weekly and monthly publications which are publicly critical of the regime.

13.1 By letter of 19 February 1998, counsel for the author states that the author did not publicly express any political opinion before he left Djibouti in 1987. He provides additional information about the author's activities between 1987 (when he left for Morocco) and his return to Djibouti in January 1991. After his return to Djibouti, he maintained contacts with Afar opponents of the Government and participated in the planning of political demonstrations and other political activities.

13.2 With regard to the nature of the author's publications, counsel explains that in Morocco, he published six issues of a newspaper for Afar students which dealt with the question of discrimination of Afar students in the educational system of Djibouti. During his time abroad, the author also worked on an essay on the history of Djibouti.

13.3 After his departure from Djibouti in September 1991, the author wrote articles about the political situation in Djibouti which were published in different European-based Arabic newspapers.[d] He continued to support the FRUD and opposed the Government, the 1994 peace accord and the human rights situation in Djibouti. It is stated that two of the newspapers in which the author published, are being distributed all over the Arabic-speaking world, including Djibouti.

13.4 With regard to the author's belief that he will be subjected to torture upon return to Djibouti, counsel recalls that the human rights situation is still very poor, and refers in this context to the United States State Department report on Djibouti. The Afar resistance is still opposing the Government and in autumn 1997, FRUD reopened its military campaign. A number of FRUD officials have been arrested in September 1997. Counsel submits that the author belongs to the oppressed Afar group, that he has made his views public, that he has been arrested and tortured in 1991, that he has participated in political activities and that he has published articles attacking the Government. According to counsel, it is likely that the Djibouti authorities are aware of the author's publications and that it is important to them to neutralize him. In the light of the present political situation and the lack of respect for human rights in Djibouti, counsel argues that a substantial and serious risk exists that the author, when returned to Djibouti, will once again be subjected to torture.

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[d] According to a list provided by the author's counsel, he published: in 1991, one letter to the editor; in 1992, three letters to the editor; in 1993, one two-page article and one letter to the editor; in 1994, one letter to the editor; in 1995, one letter to the editor and two commentaries; in 1996, two letters to the editor; in 1997, one article and one letter to the editor.

Issues and proceedings before the Committee

14.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

14.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Djibouti. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be *personally* at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

14.3 The Committee has noted the medical evidence provided by the author, and on this basis is of the opinion that there is firm reason to believe that the author has been tortured in the past. In this context, the Committee observes that the author suffers from a post-traumatic stress disorder, and that this has to be taken into account when assessing the author's presentation of the facts. The Committee is therefore of the opinion that the inconsistencies as exist in the author's story do not raise doubts as to the general veracity of his claim that he was detained and tortured.

14.4 The Committee further notes that the author was detained in 1991, allegedly because he had published articles abroad, criticizing the Government. The author has stated that he has continued to publish articles about Djibouti, and that he therefore continues to be at risk of being detained and tortured when returned to Djibouti. The Committee notes that the State party's immigration authorities were of the opinion that the author's writings were not of such character as to endanger him upon his return. The author has provided a list of his publications in Arabic-language magazines, in which he has criticized the Government for its policies and denounced the discriminatory treatment of Afars. There is no indication that the author is otherwise politically active against the Government of Djibouti.

14.5 The Committee is aware of reported human rights violations in Djibouti, but has no information which would allow it to conclude that a consistent pattern of gross, flagrant or mass violations of human rights exists in Djibouti. According to the information available to the Committee, although journalists are occasionally jailed or intimidated by police, they do not appear to be among the groups that are targeted for repression and opposition periodicals circulate freely and openly criticise the Government. The Committee also notes that no reports of torture exist with regard to the FRUD officials who were detained in September 1997. The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being subjected to torture in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established. In this connection, the Committee notes that a risk of being detained as such is not sufficient to trigger the protection of article 3 of the Convention.

14.6 The Committee considers that the information before it does not show that *substantial* grounds exist for believing that the author will be in danger of being subjected to torture if he is returned to Djibouti.

15. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

6. Communication No. 83/1997

Submitted by :	G. R. B. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	2 June 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 1998,

Having concluded its consideration of communication No. 83/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, her counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is G. R. B., a Peruvian citizen born in 1966, currently residing in Sweden, where she is seeking asylum. She claims that her forced return to Peru would constitute a violation by Sweden of article 3 of the Convention against Torture. The author also claims that a deportation per se would constitute a violation of article 16 of the Convention. Ms. G. R. B. is represented by counsel.

Facts as presented by the author

2.1 The author states that she belongs to a politically active family in Palcamayo in the Department of Junin. Her parents were sympathizers of the legal Communist Party of Peru and party meetings were frequently held in their home. The author also became a supporter of the party. From 1983 to 1985, the author studied to become a nurse in Tarma, another town in the same department, and she was at that time actively involved in the party's activities. From 1985 to 1992, the author, who had been granted a scholarship, studied medicine in the former Soviet Union (Ukrainian SSR).

2.2 On 9 May 1991, the author left Ukraine to visit her parents, and she arrived in Peru on 11 May 1991. She intended to stay in Peru until August 1991. When arriving in Palcamayo she learnt from her family that her parents' house had been searched by government soldiers in February the same year. The soldiers had confiscated books and magazines, some of which had been sent by the author from Ukraine. The author's parents had been taken to a prison, where the father had been severely beaten and tortured before they were released. Her father told the author that she should return to Ukraine as soon as possible since it was dangerous for her to stay in Peru. She nevertheless decided to stay a couple of days with relatives in Tarma.

2.3 On 16 May 1991, the author took a bus from Tarma to Palcamayo in order to visit her parents. According to the author, the bus was stopped on the way by two men belonging to the Sendero Luminoso. They forced the author off the bus and she was raped and held as a prisoner for one or two nights before she managed to escape. Her parents reported the matter to the police, but according to the author they did not show any interest in the matter. The author then returned to Ukraine on 19 May 1991.

2.4 A short time after her return to Ukraine, explosives went off at the doorstep of her parent's house, wounding an aunt and a cousin. According to the author, the explosion was a revenge for her escape.

2.5 The author arrived in Sweden on 12 March 1993 and requested asylum two weeks later. On 27 January 1994, the Swedish Immigration Board rejected her application, considering that there were no indications that she was persecuted by the Peruvian authorities, and that the acts by Sendero Luminoso could not be considered as persecution by authorities, but criminal activities. The Aliens Appeals Board rejected the author's appeal on 8 June 1995, adding that the risk of persecution from non-governmental entities like Sendero Luminoso could in exceptional cases constitute a ground for granting refugee status, but that in an internal flight alternative existed in the author's case. A new application, based on the alleged rape and medical evidence showing that the author suffered from a post-traumatic stress disorder, was turned down by the Board on 19 April 1996. On 10 February 1997, a second application, invoking humanitarian reasons, was rejected by the Aliens Appeals Board. A third application, based on a letter to the Board from the Human Rights Watch and further medical evidence to support her claim, was turned down on 23 May 1997.

The complaint

3.1 The author considers that there exists a substantial risk for her to be subjected to torture both by Sendero Luminoso and the State authorities, for which internal flight is no safe solution.

3.2 The author further claims that, in view of her fragile psychiatric condition and the severe post-traumatic stress disorder from which she is suffering as a result of her having been raped by Sendero Luminoso members, the deportation as such would constitute a violation of article 16 of the Convention.

State party's observations

4.1 On 1 August 1997, the Committee, through its Special Rapporteur transmitted the communication to the State party for comments and requested the State party under rule 108, paragraph 9, of the rules of procedure, not to expel the author while her communication was under consideration by the Committee.

4.2 By submission of 30 September 1997, the State party informs the Committee that, following its request under rule 108, paragraph 9, the Swedish Immigration Board has decided to stay the expulsion order against the author while her communication is under consideration by the Committee.

4.3 As regards the domestic procedure, the State party explains that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens Act, as amended on 1 January 1997. For the determination of refugee status there are normally two instances, the Swedish Board of Immigration and the Aliens Appeals Board. In exceptional cases, an application is referred to the Government by either of the two boards. In this context, the State party explains that the Government has no jurisdiction of its own in cases not referred to it by either of the boards. Decisions to refer a given case to the Government are taken by the boards independently. The State party clarifies that the Swedish Constitution prohibits any interference by the Government, the Parliament or any other public authority in the decision making of an administrative authority in a particular case. According to the State party, the Swedish Board of Immigration and the Aliens Appeals Board enjoy the same independence as a court of law in this respect.

4.4 As of January 1997, the Aliens Act has been amended. According to the amended Act (chap. 3, sect. 4, in conjunction with sect. 3), an alien is entitled to a residence permit if he or she experiences a well-founded fear of being subjected to the death penalty or to corporal punishment or to torture or other inhuman or degrading treatment or punishment. Under chapter 2, section 5(b), of the Act, an alien who is refused entry, can reapply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion. New circumstances cannot be assessed by the administrative authorities ex officio, but only upon application.

4.5 Chapter 8, section 1 of the Act, which corresponds to article 3 of the Convention against Torture, has been amended and now provides that an alien, who has been refused entry or who shall be expelled, may never be sent to a country where there are *reasonable grounds* (previously firm reasons) to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture *or other inhuman or degrading treatment or punishment* (text in italics added in the revised text), nor to a country where he is not protected from being sent on to a country where he would be in such danger.

4.6 As to the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international instance of international investigation or settlement. The State party explains that the author can at any time lodge a new application for re-examination of her case to the Aliens Appeals Board, based on new factual circumstances. The State party draws the attention to the fact that a fourth new request for a residence permit is currently pending before the Aliens Appeals Board. However, since the new circumstances invoked do not mainly relate to the risks faced by the author if deported, but to humanitarian reasons to let her remain in Sweden, the Government is not making a formal objection that domestic remedies are not exhausted, but leaves this question to the discretion of the Committee. Finally, the State party contends that the communication is inadmissible as being incompatible with the provisions of the Convention, since the author's claim lacks necessary substantiation.

4.7 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the cases of *Mutombo v. Switzerland*[a] and *Ernesto Gorki Tapia Paez v. Sweden*[b] and the criteria established by the Committee, first, that a person must personally be at risk of being subjected to torture, and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

4.8 The State party reiterates that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; (b) the personal risk of the individual concerned of being subjected to torture in the country to which he would be returned; and (c) the risk of the individual of being subject to torture if returned must be a *foreseeable and necessary consequence*. The State party recalls that the mere possibility that a person be subjected to torture in his or her country of origin does not suffice to prohibit his or her return for being incompatible with article 3 of the Convention.

4.9 As to the current general situation of human rights in Peru, the State party reiterates that for members of Sendero Luminoso, the Movimiento Revolucionario Túpac Amaru (MRTA) or similar terrorist organizations who are wanted by the Peruvian authorities, the risk of torture or ill-treatment cannot be disregarded. However, it adds, with respect to persons not belonging to any of the categories above, there is in general no reason of concern. According to the State party, although the human rights situation is far from satisfactory, no pattern of gross flagrant or mass violations exists in Peru.

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[a] Communication No. 13/1993 (CAT/C/12/D/13/1993), Views adopted on 27 April 1994.

[b] Communication No. 39/1996 (CAT/C/18/39/1996), Views adopted on 7 May 1997.

4.10 As regards its assessment of whether the author would be personally at risk of being subjected to torture when returned to Peru, the State party relies on the evaluation of the facts and evidence made by the Swedish Board of Immigration and the Aliens Appeals Board, showing that there are no substantial grounds for believing that the author personally would be at risk. On 27 January 1994, the Swedish Board of Immigration rejected the author's application on the basis that there were no indications that she currently was of interest to the Peruvian authorities, *inter alia*, because she had not been politically active since 1985 and had been able to visit the country twice without encountering difficulties with the authorities. As to persecution by the Sendero Luminoso, the Board of Immigration stressed that such persecution should be considered as criminal activities non-attributable to the national authorities and was therefore not a reason to grant residence permit in Sweden. On 8 June 1995, the Aliens Appeals Board maintained that no sufficient grounds for asylum existed on account of risk for persecution from the Peruvian authorities, adding that as to the threat from Sendero Luminoso, this was considered to be of local character and an internal flight alternative would therefore be possible.

4.11 On 19 April 1996, the Aliens Appeals Board rejected a new application for a residence permit by the author, based on the newly presented circumstances that she had been abducted and raped by members of Sendero Luminoso and medical certificates from a psychologist and psychotherapist regarding the author's present state of health. The Aliens Appeals Board considered that rape in itself did not represent grounds for asylum and pointed out that for asylum to be granted, such a crime must, *inter alia*, have been perpetrated or sanctioned by the authorities, or the situation must be such that sufficient protection against such an act cannot be provided by the authorities. The Board did not consider that the circumstances in the present case indicated that this was the situation and maintained that there existed an internal flight alternative. As to the humanitarian reasons invoked by the author, the Board did not consider them to be sufficient to grant a residence permit.

4.12 On 10 February 1997, the Board rejected a second new application for residence permit, based on further medical evidence of the author's state of health. The Board considered that, in accordance with established practice, a residence permit could only be granted on humanitarian grounds in exceptional cases, such as when the applicant suffered from a life-threatening disease for which treatment was not available in the country of origin or where the person suffered from an exceptionally serious disability. The humanitarian reasons for asylum were not considered to be sufficient in the present case. On 23 May 1997, a third new application was rejected, in which the author invoked the Committee's decision in the case *Ernesto Gorki Tapia Paez v. Sweden*, a letter from the Human Rights Watch and further new medical evidence. The Board did not consider that the information invoked in the application revealed any new circumstances that would entitle the author to remain in Sweden.

4.13 With reference to the decisions by the Swedish authorities, accounted for above, the State party reiterates the main elements in the author's story which indicate that she does not risk persecution by Peruvian authorities. The author states that at the time when Sendero Luminoso started its terrorist acts in the region, she and her family, being supporters of the legal Communist Party, were accused of having committed acts of terrorism. However, the author has not been politically active since 1985 when she left Peru to study in the Soviet Union. Further, the author visited Peru in both 1988 and 1991, without experiencing any difficulties with the authorities. In 1993, the author obtained a valid passport without any problems from the Peruvian embassy in Moscow. Adding the author's own statement that her family reported her abduction by the Sendero Luminoso to the police, there is nothing to indicate that the authorities were particularly interested in her or her relatives in Peru. In this connection, the State party recalls that the author did not apply for asylum until after two weeks in Sweden, indicating that she was not in immediate need of protection.

4.14 As regards the persecution that the author fears from the Sendero Luminoso, the State party stresses that the acts of Sendero Luminoso cannot be attributable to the authorities. Nevertheless, the State party recognizes that, depending on the circumstances in the individual case, grounds might exist to grant a person asylum although the risk of persecution is not related to a government but to a non-governmental entity. However, the State party's view in the present case is that, even if there is a risk of persecution from Sendero Luminoso, it is of local character and the author could therefore secure her safety by moving within the country.

4.15 The State party concludes that the information provided by the author about her political affiliation and experiences of abuse by the guerilla movement does not demonstrate that the risk of her being tortured is a foreseeable and necessary consequence of her return to Peru. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

4.16 Finally, as regards the question of whether there are any humanitarian grounds to let the author remain in Sweden, the State party shares the assessment of the Aliens Appeals Board, that there were not sufficient reasons to grant residence permit on such grounds at the time of the decisions. It is once again stressed that a fourth new application based on humanitarian grounds is pending before the Board.

4.17 By way of conclusion, the State party notes that the Committee has found violations of article 3 in all the cases against Sweden which it so far has examined on the merits. In this context, the State party points out that its immigration authorities have a considerable experience, involving difficult assessments as regards the credibility of the information submitted. Moreover, they have a considerable knowledge about the human rights situations in different countries. The State party also recalls that the test applied by the European Commission of Human Rights under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is in principle the same as the one applied by the Committee under article 3 of the Convention against Torture. However, the European Commission has declared inadmissible most complaints against Sweden as manifestly ill-founded. The State party expresses its concern about a possible development of different standards under the two human rights instruments of essentially the same right. The State party argues that diverging standards in this respect would create serious problems for states which have declared themselves bound by both instruments. Problems would arise when states attempt to adapt themselves to international case-law, if this case-law is inconsistent. According to the State party, inconsistent case-law may also have serious detrimental effects on the overall credibility of the human rights protection system at international level.

Counsel's comments

5.1 In a letter dated 2 December 1997, counsel informs the Committee that the author's fourth new application to the Aliens Appeals Board has been withdrawn.

5.2 In his comments on the State party's submission, counsel refutes the statement of the State party that except for members of Sendero Luminoso, MRTA or similar terrorist organizations who are wanted by Peruvian authorities, there is no reason to express concern about the use of torture or ill-treatment in Peru. The author draws the attention of the Committee to the case of the Peruvian asylum-seeker Napoleon Aponte Inga who was deported from Sweden and immediately arrested by Peruvian authorities at the airport, detained and tortured for a period of three months.

5.3 As to the risk of being subjected to torture by Peruvian authorities, counsel further points out that the reason why the author did not encounter any problems with the authorities during her visit in Peru during 1988 was simply that at that time the guerilla movement was hardly present in the department of Junin and the situation was therefore fairly calm. Counsel states that it is not correct to say that the author did not have any difficulties with the authorities during her visit in 1991. In fact, and as pointed out earlier, owing to her fear of the authorities she did not even dare to stay with her parents, but preferred to live with other relatives in another town.

5.4 Counsel refutes the argument of an existing internal flight alternative, since the author has seen the faces of the members of Sendero Luminoso who abducted and raped her and for that reason is not safe anywhere in the country.

5.5 Counsel further states that the fact that the author did not apply for asylum immediately at the Swedish border does not indicate anything about the author's need of protection. She was simply tired after a long journey, in a very bad mental condition and under severe stress.

5.6 Counsel concludes that there are substantial grounds for believing that the author would be subjected to torture if returned to Peru.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that a fourth new application previously pending before the Aliens Appeals Board has been withdrawn and that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits of the communication.

6.2 The issue before the Committee is whether the forced return of the author to Peru would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Before the Committee is also the issue of whether, pursuant to article 16, paragraph 1, the forced return per se would constitute cruel, inhuman or degrading treatment or punishment not amounting to torture as defined in article 1.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subject to torture upon return to Peru. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee notes that the facts on which the author's claim are based, are not in dispute. The Committee further notes that the author has never been subjected to torture or ill-treatment by the Peruvian authorities and that she has not been politically active since 1985 when she left Peru to study abroad. According to unchallenged information, the author has been able to visit Peru on two occasions without encountering difficulties with the national authorities.

6.5 The Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to Article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, *when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*". The Committee considers that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.

6.6 The Committee notes with concern the numerous reports of torture in Peru, but recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established.

6.7 The Committee must further decide whether, pursuant to paragraph 1 of article 16, the author's forced return would constitute cruel, inhuman or degrading treatment or punishment not amounting to torture as defined in article 1, in view of the author's poor state of health. The Committee notes the medical evidence presented by the author demonstrating that she suffers severely from post-traumatic stress disorder, most probably as the consequence of the abuse faced by the author in 1991. The Committee considers, however, that the aggravation of the author's state of health possibly caused by her deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention, attributable to the State party.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 or article 16 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

7. Communication No. 89/1997

Submitted by:	Ali Falakaflaki (represented by counsel)
Alleged victim:	The author
State party:	Sweden
Date of communication:	3 September 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 1998,

Having concluded its consideration of communication No. 89/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Ali Falakaflaki, an Iranian citizen born on 16 December 1969, currently residing in Sweden, where he is seeking asylum. He claims that his forced return to the Islamic Republic of Iran would constitute a violation by Sweden of article 3 of the Convention against Torture. Mr. Ali Falakaflaki is represented by counsel.

Facts as presented by the author

2.1 The author states that he belongs to a politically active family and that his father became a local communist leader for the Tudeh Party already in 1963. After having been subject to imprisonment and persecution as a result of his political activities, the father went into hiding in 1989, entrusting the author with the hiding of certain documents. Following his father's disappearance, the family's house was raided on numerous occasions by Pasdaran, the Revolutionary Guards, and as a result the author's mother fled to Sweden to join her youngest daughter. She was subsequently granted a residence permit on grounds of family reunion.

2.2 In 1989, the author became a member of Nehzat Azadi (Freedom Movement), a liberal nationalist movement aiming at a modernistic interpretation of Islam. The author explains that this movement was previously officially tolerated by the regime but nevertheless its members were subjected to various forms of harassment. In 1990–1991, the movement eventually was declared illegal by the Government. The author soon was entrusted the leadership of a group of 30 members divided into subgroups responsible for the production and distributions of flyers and leaflets. In addition, as the leader of the group, it was the author's responsibility to recruit new members to the organization. The author explains that this was dangerous work and that once the Pasdaran caught one of the subgroups when it was distributing flyers. One of the members was immediately shot dead and the others managed to escape.

2.3 In 1991, the author was suspended from university for not following Islamic rules. The author states that he thinks that the university had found out about him trying to recruit new members at university and that he had been arrested several times by Pasdaran for having participated in meetings arranged by the party. The leadership of the Freedom Movement sometimes arranged meetings with 25 to 30 participants, discussing policy, ideology and field work. These meetings were often raided by the Pasdaran and according to the author he was arrested and detained approximately 30 times during such raids, but he was always let go due to lack of evidence.

2.4 After a while, the author became dissatisfied with the party's cautious attitude and together with his closest superior and his group he started to work in the direction of a more radical policy. During a meeting on 23 October 1993, where a new and radical text for a flyer was discussed, the Pasdaran entered and they were all arrested. The author and his colleagues were brought to the Evin prison for interrogation. During the questioning, the author was told that his closest superior had been found with the text of the flyer in his possession and had been executed. The author was questioned about his own role in the Freedom Movement and about his father's whereabouts. The author was allegedly tortured during interrogation. He states that he was severely beaten and first kept in a one square metre cell before he was brought to a cell which he shared with five other prisoners. His ribs were broken, his back was hurt and one of his fingernails was pulled out. The author was furthermore subjected to a fake execution. Together with two of his cell mates he was brought before an execution squad. The two other prisoners were executed, while only fake bullets were used on the author. After a month the author was released without trial, but with the warning that he would be executed if ever involving himself in political activities again. The author states that he believes that his release was due to the fact that he had not made any confessions and that the authorities would instead watch him in the hope that he would eventually lead them to his father and other members of the group.

2.5 In the time immediately following his release the author refrained from any political activities, but eventually started writing flyers about the conditions in the Evin prison. When he learned that the police had found out about his activities and that members of his group had been arrested he decided to leave the country. The author still had a passport and managed to prolong it by using bribes. An exit permit was obtained with the help of a contact in the Justice Department.

2.6 The author arrived in Sweden on 6 February 1995 and joined his family. He requested asylum on 23 February 1995. On 21 April 1995, the Swedish Board of Immigration rejected the author's application for asylum. His appeal was subsequently rejected by the Aliens Appeals Board on 7 February 1996. A new application was rejected by the Aliens Appeals Board on 27 March 1996, and a further new application, based on the author's political activities in Sweden, was rejected on 24 February 1997. The author submitted a fourth application, based on medical evidence from the Centre for Torture and Trauma Survivors in Stockholm, an application which was rejected on 27 July 1997.

2.7 Upon arrival in Sweden, the author contacted Iranian exile organizations and joined the Iranian Social Democratic Movement. In Sweden, the author has participated in meetings and demonstrations and publicly expressed critical opinions about the Iranian government. He is further responsible for the publication of the organization's newspaper. The author also states that he continued his work by sending political materials to Iran through what he considered being a safe communication channel, involving his sister and a friend. According to the author, both the friend and the sister were arrested by the Pasdaran. At the time of the submission of the communication the sister was still held in prison.

The complaint

3.1 The author's counsel argues that, given the absolute prohibition to expel a person to a country where he risks to be subjected to torture, and given that, if the author's story is true, there is reasonable ground to believe that he would be in danger of being subjected to such treatment upon return, he should only be returned to the Islamic Republic of Iran if it is beyond reasonable doubt that the author's claim is false. Otherwise, according to counsel, the asylum seeker should be given the benefit of the doubt, not least since there exists a consistent pattern of gross and massive violations of human rights in Iran.

3.2 The author claims that a real risk exists that he would be subjected to torture or that his security would be endangered if he were to be returned to his country. He further recalls that he comes from a politically active family and has been detained and tortured because of his active work for the Freedom Movement, a liberal nationalist party declared illegal and in violation of the Constitution by the Government in 1990–1991. It is well-known that members of political opposition aiming at overthrowing the Government are severely persecuted. In this context, the author refers to, among others, reports by the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, which attest to a continuing violation of all basic rights.

3.3 Counsel recalls that the presented forensic medical report prepared by the Centre for Torture and Trauma Survivors in Stockholm shows that the findings are in complete consistency with the author's claims of torture and ill-treatment. Furthermore, according to the medical report, the author is suffering from a post-traumatic stress disorder.

State party's observations

4.1 By submission of 28 November 1997, the State party informs the Committee that, following its request under rule 108, paragraph 9, the Swedish Immigration Board has decided to stay the expulsion order against the author while his communication is under consideration by the Committee.

4.2 As regards the domestic procedure, the State party explains that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens Act, as amended on 1 January 1997. For the determination of refugee status there are normally two instances, the Swedish Board of Immigration and the Aliens Appeals Board. In exceptional cases, an application is referred to the Government by either of the two boards. In this context, the State party explains that the Government has no jurisdiction of its own in cases not referred to it by either of the boards. Decisions to refer a given case to the Government are taken by the boards independently. The State party clarifies that the Swedish Constitution prohibits any interference by the Government, the Parliament or any other public authority in the decision making of an administrative authority in a particular case. According to the State party, the Swedish Board of Immigration and the Aliens Appeals Board enjoy the same independence as a court of law in this respect.

4.3 As of January 1997, the Aliens Act has been amended. According to the amended Act (chap. 3, sect. 4, in conjunction with sect. 3), an alien is entitled to a residence permit if he or she experiences a well-founded fear of being subjected to the death penalty or to corporal punishment or to torture or other inhuman or degrading treatment or punishment. Under chapter 2, section 5 (b), of the Act, an alien who is refused entry can reapply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion. New circumstances cannot be assessed by the administrative authorities ex officio, but only upon application.

4.4 Chapter 8, section 1, of the Act, which corresponds to article 3 of the Convention against Torture, has been amended and now provides that an alien who has been refused entry or who shall be expelled, may never be sent to a country where there are *reasonable grounds* (previously firm reasons) to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture *or other inhuman or* *degrading treatment or punishment* (text in italics added), nor to a country where he is not protected from being sent on to a country where he would be in such danger.

4.5 As to the admissibility of the communication, the State party submits that it is not aware of the same matter having been presented to another international instance of international investigation or settlement. The State party explains that the author can at any time lodge a new application for re-examination of his case to the Aliens Appeals Board, based on new factual circumstances. Finally, the State party contends that the communication is inadmissible as being incompatible with the provisions of the Convention.

4.6 As to merits of the communication, the State party refers to the Committee's jurisprudence in the cases of *Mutombo v. Switzerland*[a] and *Ernesto Gorki Tapia Paez v. Sweden*,[b] and the criteria established by the Committee, first, that a person must personally be at risk of being subjected to torture, and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

4.7 The State party reiterates that when determining whether article 3 of the Convention applies, the following considerations are relevant: (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; (b) the personal risk of the individual concerned of being subjected to torture in the country to which he would be returned; and (c) the risk of the individual of being subject to torture if returned must be a *foreseeable and necessary consequence*. The State party recalls that the mere possibility that a person be subjected to torture in his or her country of origin does not suffice to prohibit his or her return for being incompatible with article 3 of the Convention.

4.8 The State party states that it is aware that Iran is reported to be a major violator of human rights and that there is no indication of improvement. It leaves it to the Committee to determine whether the situation in Iran amounts to a consistent pattern of gross, flagrant or mass violations of human rights.

4.9 As regards its assessment of whether or not the author would be personally at risk of being subjected to torture when returned to Iran, the State party relies on the evaluation of the facts and evidence made by the Swedish Board of Immigration and the Aliens Appeals Board. In its decision of 21 April 1995, the Swedish Board of Immigration found that the elements provided by the author gave occasion to doubt the credibility of the author. The Aliens Appeals Board, in its decision of 7 February 1996, also found that the circumstances invoked by the author during the appeal were not trustworthy.

4.10 On 27 March 1996, the Aliens Appeals Board rejected a new application for a residence permit by the author, based on the fact that he has been politically active since his arrival in Sweden and further invoking humanitarian reasons concerning his mother's state of health. The application was turned down by the Aliens Appeals Board, since the circumstances invoked by the author had already been reviewed in the previous decision. A second new application was rejected by the Aliens Appeals Board on 24 February 1997, in which the author stated that he had distributed political material into Iran after his arrival in Sweden. The correspondence which had gone via his sister and another contact, had allegedly been traced back to him by the Iranian authorities and his sister had subsequently been interrogated and imprisoned. The application was turned down by the Board, noting that in the light of the Board's knowledge of anti-governmental activities in Iran and distribution of politically sensitive material in Iran, it was not deemed credible that the author would expose himself and his sister of such a risk by using a personal communication route for distribution of the mentioned materials into the Islamic Republic of Iran.

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[a] Communication No. 13/1993 (CAT/C/12/D/13/1993), Views adopted on 27 April 1994.

[b] Communication No. 39/1996 (CAT/C/18/39/1996), Views adopted on 7 May 1997.

4.11 Finally, on 25 July 1997, the Aliens Appeals Board examined a third new application lodged by the author, where he invoked an examination report by the Centre for Torture and Trauma Survivors according to which the author without any doubt had been subjected to torture and according to which there was good concordance between the forensic medical investigation; the patient's allegations and the very clinical picture of post-traumatic stress disorder found at the investigation. The application was turned down by the Board, since the matter of the author's imprisonment and his alleged torture in that connection had previously been reviewed by the Board. Already in its initial decision of 7 February 1996 the Aliens Appeals Board stated that "(i)n view of the author's lack of credibility in the above-mentioned respect, the Board does not consider that it has cause to give credence to his statement that his injuries occurred as a result of physical abuse or torture".

4.12 The State party draws the attention of the Committee to the main elements in the author's story which give raise to doubts as to the credibility of the author. Firstly, the author travelled to Sweden from Iran with a genuine and valid passport. Taking into account that, after his arrest by the Iranian authorities, the author was released after a month without facing trial, and that his father's political activities were already known by the authorities at the time of the author's arrest, the Swedish Board of Immigration and the Aliens Appeals Board questioned the author's credibility as to the statement that bribes were used to enable him to leave Iran. Subsequently, there is no reason to believe that the author is of particular interest to the Iranian authorities. Secondly, in his appeal to the Aliens Appeals Board, the author invoked, among others, internal correspondence between Iranian authorities regarding a warrant of his arrest. The State party submits that the author has not been able to give any reasonable explanation as to how he was able to acquire original documents which were clearly intended for internal purposes. Further, there is nothing to support the author's claim that he has distributed politically sensitive material to Iran. Finally, it should be noted that the author did not request asylum until almost two weeks after his arrival in Sweden, thus indicating that he is not in any immediate need of protection.

4.13 The State party concludes that, in the circumstances of the present case, the author's return to the Islamic Republic of Iran would not have the foreseeable and necessary consequence of exposing him to a real risk of torture. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

Counsel's comments

5.1 In her comments on the State party's submission, counsel for the author draws the attention to the Committee to the fact that the author has already lodged three so-called new applications with the Aliens Appeals Board. There are no longer any new circumstances to be presented, which is a pre-requisite for the Aliens Appeals Board to examine a new application. All domestic remedies have thus been exhausted.

5.2 In the instant case, counsel recalls, the Swedish immigration authorities have not directly questioned the fact that the author has been politically involved with the Freedom Movement in the Islamic Republic of Iran and that he was imprisoned for one month without trial, nor do they seem to question his father's political background. The Swedish authorities build their decisions entirely on the basis of an arbitrary assessment of the author's general trustworthiness. According to counsel, the arguments used by the authorities to turn down the author's claim for asylum are stereotyped and found in almost every rejection decision. Any inconsistencies or contradictions found in the author's story are thereafter used to support the authorities a priori judgement that the author is not credible, although complete accuracy is seldom to be expected by victims of torture.

5.3 Counsel points out that the main argument of the immigration authorities is that the author is not trustworthy because he has (a) left the Islamic Republic of Iran with a valid passport; (b) obtained a legal exit visa; and (c) legally extended the validity of his passport. She also points out that the author has given a credible and consistent explanation of how he used bribes and the influence of a personal contact in the security force in order to be able to leave with a valid passport. The explanation was rejected by the immigration authorities as not credible, although a report from a visit to Iran made in 1993 by representatives from the Aliens Appeals Board[c] shows that, according to the Iranian lawyer normally engaged by the Swedish Embassy in Tehran, it is difficult but nevertheless possible to bribe yourself out of Iran, in the way suggested by the author.

5.4 Counsel further contends that the author has presented reasonable explanations as to how he was able to acquire original documents (a copy of a detention order) intended for internal communication between the Iranian authorities. According to the author, he contacted friends in the Islamic Republic of Iran who managed to get the document in question by bribes, and the information thus provided by the author corresponds with information previously given by the Iranian lawyer entrusted by the Swedish Embassy in Tehran. The author has further also given a detailed account of the communication route used in order to distribute politically sensitive material to the Islamic Republic of Iran.

5.5 Counsel concludes that the author has presented sufficient evidence that he was politically active in Nehzat Azadi (the Freedom Movement) in the Islamic Republic of Iran and is well known to the Iranian authorities; that he has been detained, tortured and ill-treated as a result of his political activities; that he has also been politically active against the Iranian regime after his arrival in Sweden and finally that the human rights situation in the Islamic Republic of Iran is deplorable and that political activists are in great danger of persecution. She therefore claims that the author's return to the Islamic Republic of Iran would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits of the communication.

6.2 The issue before the Committee is whether the forced return of the author to Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subject to torture upon return to Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

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[c] The delegation preparing the report included the Director General of the Aliens Appeals Board at the time, as well as counsel in the present case who was at the time working for the immigration authorities.

6.4 The Committee has noted the State party's assertion that its authorities apply practically the same test as prescribed by article 3 of the Convention when determining whether a person can be deported. The Committee, however, notes that the text of the decisions taken by the Swedish Board of Immigration (21 April 1995) and the Aliens Appeals Board (7 February and 27 March 1996, 24 February and 27 July 1997) does not show that the test as required by article 3 of the Convention (and as reflected in chap. 8, sect. 1, of the 1989 Aliens Act as amended) was in fact applied in the author's case.

6.5 In the author's case, the Committee considers that the author's family background, his political affiliation with the Freedom Movement and activities, his history of detention and torture, should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The State party has pointed to circumstances in the author's story which raise doubt about the credibility of the author, but the Committee considers that the presentation of the facts by the author do not raise significant doubts as to the trustworthiness of the general veracity of his claims. In this context the Committee especially refers to the existence of medical evidence demonstrating that the author suffers from post-traumatic stress disorder and supporting the author's claim that he has previously been tortured while in detention.

6.6 The Committee is aware of the serious human rights situation in Iran, as reported *inter alia* to the Commission on Human Rights by the Commission's Special Representative on the situation of human rights in the Islamic Republic of Iran. The Committee notes the concern expressed by the Commission, in particular in respect of the high number of executions, instances of torture and cruel, inhuman or degrading treatment or punishment.

6.7 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Iran.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to the Islamic Republic of Iran, or to any other country where he runs a real risk of being expelled or returned to Iran.

[Adopted in English, French, Russian and Spanish, the English text being the original version.]

8. Communication No. 90/1997

Submitted by:	A. L. N. (name deleted)
Alleged victim:	The author
State party:	Switzerland
Date of communication:	25 July 1997

The Committee against Torture, established in conformity with article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 1998,

Having completed consideration of communication No. 90/1997 submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken account of all the information communicated to it by the author of the communication and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the convention

Draft recommendation by the Rapporteur

1. The author of the communication is A. L. N., an Angolan born on 25 September 1978. He is currently resident in Switzerland where he has applied for refugee status and risks being sent home. The author claims that his expulsion would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The facts as submitted by the author

2.1 The author states that on 16 February 1997 his father, a member of the União Nacional para a Independêncía Total de Angola (UNITA) gave him a video cassette on torture and massacres perpetrated by the Movimento Popular para a Libertação de Angola (MPLA) for him to take to a friend. The cassette contained a scene filmed in 1987 showing soldiers plunging the then nine-year-old author's hand into boiling water in front of his father. The author says that the scars are still visible. He was arrested on the way during an identity check by MPLA soldiers, who took him to an unknown site in Luanda, where he was beaten. He was then forced to take the soldiers to the family home so that they could arrest his father. At the house he managed to escape while the soldiers were momentarily distracted. On 19 February 1997, he left the country on a borrowed passport issued to the son of one of his father's friends and went to Italy. He arrived in Switzerland on 24 February 1997.

2.2 That same day, the author submitted an application for asylum to the Refugee Registration Centre in Geneva (CERA). On 2 June 1997, the Federal Office for Refugees (ODR) rejected the application and ordered his expulsion, finding that the author's statements did not meet the plausibility criteria laid down in article 12 (a) of the Federal Asylum Act. The Office also said there was no evidence to suggest that the author would be specifically and seriously likely, in the event of a return to his country, to be subjected to torture or to cruel, inhuman or degrading treatment.

2.3 The author appealed against this decision before the *Commission de recours en matière d'asile* (CRA), which rejected the appeal in a decision dated 16 July 1997. The Commission found that the author had not shown that his return to his country of origin would put him in danger. It added that the author was young, in good health and, according to his own statements, capable of going back to live in Luanda, since he had already lived there and could count on his family for support.

The complaint

3. The author says that he is still on the wanted list because of the video cassette and fears for his physical and mental health if sent home. He says that he is part of the Bakongo ethnic minority, and that CRA itself has acknowledged that members of that group are exposed to some danger.

The State party's observations on the admissibility and merits of the communication

4. On 16 October 1997 the Committee, through its Special Rapporteur, forwarded the communication to the State party for its observations.

5.1 In a reply dated 15 December 1997, the State party indicated that the author had exhausted domestic remedies. The communication could thus be considered on its merits.

5.2 The author's main point, i.e., his arrest after coming into possession of a video cassette showing a scene in which soldiers plunged his hand into boiling water, had not been consistently related at the two hearings on his application, at CERA and before the Cantonal authorities. His accounts were vague or contradictory as regards both the origin of the video cassette and the way in which it was supposed to have been filmed or what precisely it contained.

5.3 The author said that the soldiers had not asked him who the video cassette was for. There again his story was not credible. Experience unfortunately showed that, as a rule, people arrested in such cases were tortured precisely in order to obtain information about those who had an interest in documents challenging the regime in power.

5.4 The author's account of how he managed to escape was also unconvincing. It did not seem possible that the author, escorted by five guards, should have managed to escape from them as easily as described, without even being pursued.

5.5 On the strength of the author's tale, the scars visible on his hands could not be ascribed with sufficient probability to acts of the kind prohibited by the Convention. They could just as well have resulted from an occupational or domestic accident, for example. The author had submitted no medical certificate indicating that he was still traumatized by the incident as he stated in his communication.

5.6 The State party also said that no causal link could be established between the incident related – the author's suffering at the hands of MPLA soldiers, which dated from 1987 – and his departure for Switzerland.

5.7 As regards the situation in the country, Angola was no longer in a state of civil war or widespread violence. The peace process had passed a milestone with the establishment on 11 April 1997 of a Government of unity and national reconciliation. The author's claim to have been arrested and beaten by MPLA soldiers on 16 February 1997 for being in possession of a compromising video cassette seemed somewhat improbable in the light of the moves towards national reconciliation made by the various opposition groups, including MPLA and UNITA.

5.8 CRA had concluded it would be unreasonable to require the author to be returned to areas under UNITA control or close to the demarcation lines. Elsewhere, failing specific risks, there were adequate safeguards of his safe return at least to the capital or a number of large urban conglomerations along the coast. Living conditions in Luanda, where there were serious problems, were nevertheless not such as to rule out on humanitarian grounds the return of young, single people in good health.

5.9 Lastly, the author said that he belonged to an ethnic minority, the Bakongo, whose members CRA itself acknowledged to face certain dangers. CRA had indeed stated that Bakongos and members of other ethnic groups could not get back to their home districts from Luanda without some danger. But it had also said that, contrary to rumour and despite rivalries more social than ethnic in nature, there was no indication that, since the signature of the Lusaka Protocol, the governmental authorities had taken any steps that directly or indirectly discriminated against or persecuted minority population groups in Angola, including the Bakongo, members of whom were to be found throughout the State apparatus.

5.10 The fact that Bakongos had previously lived in Luanda or still had family ties there was one factor that entered into consideration in deciding whether or not they could find refuge within the country and survive, socially and economically, in the capital.

5.11 In the present case, the author had not shown that returning to his country of origin would put him in any specific danger. He was young and in good health, and according to his own statements would be able to re-establish an existence in Luanda since he had already lived there and could count on his family for support.

5.12 Even if the Committee concluded that the human rights situation in Angola, including the unfortunate position that the author claimed for his ethnic minority, was serious and gave rise to concern, such a finding would not, in the absence of supplementary indications, be sufficient to establish that the author was in personal danger of being tortured.

5.13 In the light of the foregoing, the State party considered that returning the author to Angola would not constitute a violation of the Convention.

Author's comments

6. By letter dated 17 March 1998, the author indicates that the situation in Angola is very unstable and that the country is still at war. If he were expelled, he would thus be in physical danger.

Issues and proceedings before the Committee

7. Before considering any claims contained in the communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted, and finds there are no further obstacles to its declaring the communication admissible. Since the State party and the author have both made comments regarding the substance of the

communication, the Committee will proceed to consider the communication on its merits.

8.1 The Committee must decide whether sending the author back to Angola would violate Switzerland's obligation under article 3 of the Convention not to expel or return (*refouler*) an individual to another State if there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.2 The Committee must decide, pursuant to article 3, paragraph 1, if there are substantial grounds for believing that the author would be in danger of being tortured if sent back to Angola. To do so, it must take account of all relevant considerations as called for by article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her particular circumstances.

8.3 The Committee observes that past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention, but its purpose in considering the communication is to decide whether, if the author were returned to Angola, he would now risk being tortured.

8.4 In the case in point the Committee notes the author's claim to have been tortured in 1987 and beaten upon his arrest in February 1997. The author has however, supplied no evidence, whether medical certificates or other, attesting to acts of torture or ill-treatment or the sequelae of such. In particular, the Committee notes that the author has supplied no detailed information on how he was treated when arrested in February 1997, although it was that arrest that prompted him to leave for Switzerland.

8.5 The author bases his fear of torture on the fact that he is still being sought by MPLA soldiers because of the video cassette. The Committee notes, however, that he has put forward no reason to suggest that he is indeed still wanted. Neither does he make any allusion to the circumstances of his family, including his father, who, according to the author, was also wanted in connection with the video cassette.

8.6 The Committee notes that the situation in Angola, given the peace process, is still difficult, as recently stated in a report by the Secretary-General on the United Nations Observer Mission in Angola (MONUA). The same report states that human rights violations, including torture, which are attributed to the national police among other parties, continue to take place. But it also says that significant progress has been made and that the Government and UNITA have agreed on important points which should enable the peace process to advance. It would therefore seem that the situation in the country has not deteriorated since the author left.

8.7 The Committee points out that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. On the basis of the above considerations, the Committee is of the opinion that such a risk has not been established.

8.8 In the light of the foregoing, the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if sent back to Angola.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the facts before it do not indicate a breach of article 3 of the Convention.

[Text adopted in French (original version) and translated into English, Spanish and Russian.]

9. Communication No. 94/1997

Submitted by:	K. N. (name withheld) (represented by counsel)
Alleged victim:	The author
State party:	Switzerland
Date of communication:	30 October 1997

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 1998,

Having concluded its consideration of communication No. 94/1997, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is K. N., a national of Sri Lanka, seeking asylum in Switzerland. He claims that his forced return to Sri Lanka by Switzerland would constitute a violation of article 3 of the Convention. He is represented by counsel.

Facts as presented by the author

2.1 The author states that he was born on 13 March 1972 and that he is a Tamil and a Christian. He lived with his family in the northern province of Jaffna. In 1990, during the war between the "Indian peacekeeping forces" and the Tamil Tigers (Liberation Tigers of Tamil Eelam – LTTE), the author was forced to work for the Tigers. He was detained for a few days by the Indian army and then released. However, in 1994, the author's brother joined the Tamil Tigers and when the Sri Lankan armed forces reconquered Jaffna in October 1995, they were allegedly searching for the author and his brother. The author states that he has no news from his brother since he joined the Tigers.

2.2 On 13 September 1995, the author fled to Kilinochi, further south, a town controlled by the Tigers. In autumn 1996, when the Sri Lanka army approached the town, the author fled to Colombo since he had been informed by his parents that the army had come to their house on three occasions to look for him. On 5 September 1996, he flew to Rome.

2.3 The author arrived in Switzerland on 10 September 1996. On 30 October 1996, the Office fédéral des réfugiés (ODR) rejected his application for recognition as a refugee. The Commission suisse de recours en matière d'asile (CRA) rejected the author's appeal on 22 January 1997. The author was ordered to leave Switzerland before 28 February 1997.

2.4 On 31 July 1997, the author through his attorney requested the CRA to review its decision, arguing that the fact that the Sri Lanka army had searched for him had been overlooked. On 8 August 1997, the CRA rejected the application as out of time.

2.5 At the end of July, beginning of August 1997, the author received a letter from his father, dated 10 July 1997, in which he warned him not to come home because the security forces were looking for him. The author presented the letter with an application to the ODR on 5 September 1997, after having had it translated. On 10 September 1997, the ODR rejected the author's application, considering the letter one of convenience. The author appealed against this decision, but in a letter of 13 October 1997 he was informed by a judge of the CRA that he considered the appeal as devoid of any chance of success; consequently, no suspensive effect was given to the appeal and the author was requested to pay SwF 900 if he wanted the ODR to consider his case. The author, in a letter of 29 October 1997, explained to the judge that he did not consider the appeal to be an effective remedy, since it had no chance of success. He further considered the requirement to pay SwF 900 excessive and constituting a deterrent, since he had no income whatsoever. The author recalls that the Committee's rules of procedure state that a remedy need not be exhausted where it is unlikely to bring effective relief to the alleged victim.

The complaint

3.1 It is argued that the rejection of the author's application as out of time is in violation with article 3 of the Convention, which constitutes an absolute prohibition on *refoulement*. He further argues that he only discovered on 29 July 1997, that the officers had overlooked the fact, so that his application should be considered in time, since it was submitted within three months of the discovery.

3.2 The author claims that he runs a serious danger of being detained and tortured in Sri Lanka by the security forces, should he be returned. It is submitted that the Sri Lanka army is known for its poor human rights record.

State party's observations

4. On 18 November 1997, the Committee, acting through its Special Rapporteur for New Communications, transmitted the communication to the State party for comments and requested the State party not to expel the author while his communication was under consideration by the Committee.

5.1 In its observations, dated 19 January 1998, the State party informs the Committee that the necessary measures have been taken to suspend the author's expulsion. While recognizing the importance of interim measures of protection to guarantee a person's effective recourse to the Committee under article 22 of the Convention, the State party notes that the possibility of demanding interim measures is not foreseen in the Convention itself and that article 108, paragraph 9, is just a rule of procedure. According to the State party, the individual communication to the Committee is and should remain an exceptional remedy, not the automatic follow up after exhaustion of domestic remedies. The regular issuing of requests under rule 108, paragraph 9, could interfere with the subsidiary nature of the communications procedure.

5.2 The State party is of the opinion that the Committee should only use the procedure under rule 108, paragraph 9, when there is a prima facie important and serious risk that someone would be subjected to torture if deported. The State party expresses its concern about the fact that the Committee has requested to suspend the expulsion in 9 out of the 16 cases concerning Switzerland. It notes that the exception thus has become the rule. The State party considers that this use of rule 108, paragraph 9, is unjustified in the majority of cases, and shows a lack of understanding of the seriousness with which the Swiss authorities examine the applicant's situation. In the instant case, the State party fails to understand the reasons which made the Committee issue a request for interim measures.

6. With regard to the admissibility of the present communication, the State party states that it is not aware of the case having been submitted to another instance of international investigation or settlement. The State party does not contest the admissibility for failure to exhaust domestic remedies either.

7.1 Concerning the merits of the communication, the State party recalls the text of article 3 of the Convention, as well as the Committee's jurisprudence in this respect. It notes that the author bases his complaint mainly on his short detention by the Sri Lanka security forces on suspicion of belonging to the Tamil Tigers and on reports that the Sri Lanka security forces were looking for him, after his brother joined the LTTE. According to the author, he would risk to be subjected to torture because he belongs to the Tamil minority, and because of his age he would be recruited into the LTTE. Further, he would be suspected of belonging to the LTTE because of his brother's membership.

7.2 The State party submits that the facts as presented by the author have not been the object of a thorough examination by the authorities, as his request for asylum was rejected following the existing case law, since he mainly invoked the situation in his country as ground for asylum and no personal grounds of persecution. The fact that the authorities have not challenged the facts as presented by the author can thus not be taken to indicate that they accepted them as established. Indeed, the ODR, in its decision of 30 October 1996, expressed doubt with regard to the likelihood of some of the events recounted by the author.

7.3 According to the State party, the facts as presented by the author in any event fail to show the existence of grounds for believing that he would be personally in danger of being subjected to torture upon his return to Sri Lanka. In this connection, the State party notes that the author has never given precise information with regard to his arrest or the circumstances of his detention, despite an invitation to do so by the ODR. In the State party's opinion, the author's description of these events are vague and full of gaps, raising doubts about their reality.

7.4 Furthermore, the author has never claimed to have been subjected to torture . In this context, the State party refers to the Committee's decision in communication No. 38/1995[a] where it took into consideration the fact that the author had never claimed that he had been tortured in reaching its decision that his case showed no violation of article 3. Moreover, the State party points out that the alleged arrest and detention in the instant case date back more than seven years, and that it would therefore be difficult to admit a link between this event and the author's present fear of persecution. During the hearing before the immigration authorities, the author declared that since his release he had lived in Kilinochi for 11 months without any problem, as well as in Colombo.

7.5 With regard to the author's claim that the security forces are looking for him because his brother is a member of the LTTE, the State party considers that his statements in this regard are not credible. During the hearing, he was asked whether he had encountered problems because of his brother, to which he replied that he was taken in for questioning in 1994, which was disturbing, but did not cause any problems. In his communication to the Committee, the State party notes that the author states that the Sri Lanka army is looking for him, because of his brother, a claim contradictory to what he told the Swiss immigration authorities. With respect to the letter from the author's father, of 10 July 1997, the State party contends that it does not constitute sufficient evidence, since it gives no support to the author's claim of arrest and detention, and coming from a close relative, has little evidentiary value. In the State party's opinion, if the army were in reality looking for the author, he could not have left Kilinochi to go to Vavuniya, since the area is closely controlled by the army; nor could the author have easily obtained an army pass to go to Colombo. The State party concludes that the author has not substantiated his claim that the army is looking for him and that he consequently risks to be subjected to torture.

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[a] Babikir v. Switzerland, Views adopted on 9 May 1997.

7.6 The State party notes that the author now claims that he risks persecution by the army, whereas before the immigration authorities he claimed that "different movements" had stopped and interrogated him. In this context, the State party refers to the hearing before the immigration authorities, where the author replied to the question what he would risk upon return to his country, that he risked being taken by the movement for which he would have to work. The State party concludes that the author's asylum request was mainly based on the threat by the LTTE, whereas before the Committee he claims risk of persecution by the army. The State party recognizes the possibility that a person is threatened by the State and an opposition movement at the same time, but does not believe that this is so in the author's case. Rather, the State party considers it likely that the author has changed his story in view of the text of article 3 of the Convention, that the risk of torture must be originating in State authority. Again referring to the minutes of the hearing before the immigration authorities, the State party notes that the author indicated as reasons for his departure the problems with the movement and bombardments.

7.7 The State party concludes that the author has failed to show that he would risk to be subjected to torture upon return to Sri Lanka. The State party adds that the situation of human rights in a country cannot bring a person within the protection of article 3 in the absence of a personal risk. According to the State party, the human rights situation in Sri Lanka has improved considerably since October 1994, after the installation of the Human Rights Task Force. It also points out that the author could reside in a part of Sri Lanka that does not suffer from civil war.

The author's comments

8.1 In his comments, the author maintains that the Sri Lanka army is looking for him since his brother joined the LTTE, and that he told the Swiss authorities about this. The fact that he also had problems with the Tamil movements, does not contradict his problems with the army. In this connection, counsel for the author notes that the ODR and the CRA never pointed to any contradictions in the author's story. Counsel explains that the author's fear for the LTTE has not been mentioned in his communication to the Committee, because the LTTE controls only the northern part of Sri Lanka, and the author could hide from them in Colombo if he wanted. This does not imply that he has changed his story for the benefit of the application of article 3 of the Convention.

8.2 Counsel submits that the author is threatened by serious persecution from the Sri Lanka security services, since the war is still continuing and since the LTTE have increased their activities in Colombo.

8.3 With regard to the State party's concern that the Committee is being used as a regular supervisory body, counsel submits that the State party's concern is groundless, in view of the fact that Swiss immigration authorities handle about 30,000 cases a year. Counsel notes that the author's case was examined by one ODR official and the appeal was heard by a single judge. In counsel's opinion, the judges are not really independent since they are appointed by the Government and not by Parliament.

Issues and proceedings before the Committee

9. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee finds that no further

obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subject to torture upon return to Sri Lanka. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be *personally* at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

10.3 The author has claimed that he was arrested once in 1990 by the Indian armed forces, that his brother became a member of the Tamil Tigers in 1994 and that for this reason the army is looking for him and has searched his family's house on several occasions. The Committee notes that the only substantiation in support of the author's claim is a letter from the author's father, in which it is stated that the army came to the house to look for him and his brother. The Committee notes, however, that the letter does not give any details about either the author's or his family's situation. The author has not presented any other evidence in support of his claim. He does not claim that he has been tortured in the past.

10.4 The Committee has carefully examined the material before it and finds that it appears that the author's main reason to leave his country was that he felt caught between the two parties in the internal conflict. There is no indication that the author himself is personally targeted by the Sri Lankan authorities for repression.

10.5 The Committee is aware of the serious situation of human rights in Sri Lanka and notes with concern the reports of torture in this country. The Committee recalls however that, for the purpose of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

B. Decisions

1. Communication No. 42/1996

Submitted by:	R. K. (name withheld) (represented by counsel)
State party:	Canada
Date of communication:	22 February 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1997,

Adopts the following decision:

Decision on admissibility

1. The author of the communication is Mr. Richard Kollo, a Liberian citizen belonging to the Krahn ethnic group, born on 30 November 1967, currently residing in Canada. He claims that his return to Liberia would constitute a violation of article 3 of the Convention against Torture by Canada. He is represented by counsel.

2.1 The author states that his uncle, who raised him following the death of his father when he was two years old, was politically active; he was a member of the United Liberation Movement of Liberia (ULIMO). In 1985, members of the Krahn community who supported a certain political candidate were accused of electoral fraud. Opposing the Krahn and in response to the alleged fraud, another political party was founded in 1987: the National Patriotic Front of Liberia (NPFL).

2.2 The author states that in 1990, his uncle was murdered by (military) members of the NPFL. They also detained the author's cousin. After these events, the author decided to seek refuge in the Red Cross office. He paid someone to help him to go to Sierra Leone; he crossed the border with five other persons. In Sierra Leone, the author hid in an ULIMO office.

2.3 One night, soldiers from the NPFL were searching for ULIMO members and the author fled to Israel using his Liberian passport. During his stay in Israel, someone stole his luggage and documents.

2.4 The owner of the place where he was staying helped him to flee to Canada, where he arrived on 8 February 1993. On 26 February 1994, the author married a Canadian woman; a child was born on 19 April 1995.

2.5 Immediately after arriving in Canada, the author requested political asylum. On 20 April 1994, his application was dismissed by the Immigration and Refugee Board of Canada. The author applied to the Federal Court of Canada for leave to appeal against the Board's decision. The Court rejected his request. On 15 December 1995, a request lodged by the applicant in pursuance of the post-claim risk assessment process was rejected. The author was told to leave the country before 22 February 1996.

2.6 It further appears from the communication that the author's wife is sponsoring his application for immigration to Canada. On 20 December 1995, the immigration authorities rejected the author's request for his expulsion to be suspended pending the outcome of the procedure for examination of the immigration application, which was already under way. The author complains that the Canadian authorities refuse to accept the bona fide character of his marriage. Immigration officials are said to have consistently refused to grant his wife an interview to prove the validity of the marriage.

The complaint

3.1 According to the author, if he returns to Liberia he will be killed like his uncle. To substantiate his statements concerning the serious human rights violations occurring in Liberia, where several factions are confronting one another, the author quotes several extracts from a report by Amnesty International, as well as Country Reports on Human Rights Practices from 1994.

3.2 The author claims that his return to Liberia would constitute a violation of article 3 of the Convention against Torture by Canada. He requests the Committee to ask Canada not to expel him while his communication is under consideration by the Committee.

Comments of the State party

4. On 19 March 1996, the Committee forwarded the communication to the State party through its Special Rapporteur to enable it to draw up its comments, and requested it not to expel the author while his communication was under consideration by the Committee; the request was granted.

5.1 In a note dated 9 September 1996, the State party contests the admissibility of the communication. It points out that the author had not exhausted the domestic remedies available before submitting his communication to the Committee against Torture. In addition, his communication did not demonstrate the minimum justification needed to meet the requirements of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5.2 The State party explains that throughout the Canadian immigration process, the author essentially advanced the same allegations as those he is putting forward in support of his communication to the Committee against Torture. He claimed that his uncle had been a member of ULIMO and had been killed by the NPFL, an armed faction which opposed it, on account of his political activities. The author claimed that, because of his relationship with his uncle, his life or his safety would be in danger if he returned to Liberia. Specifically, he feared that he would be tortured.

5.3 The State party points out that the investigations carried out by the Canadian authorities revealed major gaps concerning fundamental and crucial aspects of the author's claims. It was impossible to establish that he was of Liberian origin and that his return to Liberia would entail genuine risks for his life or his safety. Inconsistencies in his statements seriously undermined his credibility and compounded an absence of objective proof of his allegations.

5.4 The State party holds that various domestic remedies were open to the author to challenge the conclusions of the Canadian authorities. Those remedies, had he availed himself of them, would have enabled him to demonstrate as far as possible that the inconsistencies noted in his statements were merely apparent, and that his claims were backed up by a rational explanation of which those responsible for taking a decision on his case were unaware. Yet he had not maintained and pursued a request for judicial review by the Federal Court, and he had not made a request for judicial review by the Federal Court of two other decisions taken by the Canadian authorities. Nor had he made any request for a ministerial waiver on humanitarian grounds.

5.5 The remedies, had the author pursued them, might have brought him relief within a reasonable time limit. All of them offered him a chance to correct and explain the gaps in his dossier before the date of application of the expulsion measure against him, and the remedies ultimately held out the possibility that he would be able to settle in Canada.

5.6 The State party claims that, because of Mr. Rollo's failure to pursue those remedies before appealing to the Committee against Torture, his communication fails to satisfy the condition set out in article 22, paragraph 5 (b) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It calls on the Committee to declare the communication inadmissible.

Counsel's comments

6.1 In his reply, dated 20 February 1997, counsel describes as speculation the State party's comments that, had he availed himself of the remedies referred to, the author would have had an opportunity to demonstrate that the Government was mistaken and to win his case.

6.2 He expresses surprise that the State party should argue that the author had not exhausted all remedies, when the Government itself had summoned him to the local immigration office to tell him to arrange for his departure. On that occasion, an immigration official confirmed to the author that he must report for expulsion to Liberia. Since that confirmation had been given by an immigration official responsible for expulsions, the author was in no doubt that his deportation to Liberia was imminent, and that it was to take place shortly after the first summons. Indeed, if it had not been for the appeal lodged by the author with the Committee against Torture, arrangements would have been made and the author would already have been deported to Liberia without further delay. There is no doubt in the applicant's mind – indeed, Canada's machinations in that regard were quite clear – that the department responsible for expulsions was preparing to deport him.

6.3 It is submitted that the Canadian Government had every opportunity to remedy its failure to meet its international obligations but that its bad faith and totally negative attitude to the author's dossier was illustrative of its lack of will to assist him. In that regard, counsel draws attention to the fact that the author had first exhausted all the refugee status determination procedures, and that he had been given a negative response. Moreover, the Canadian Government itself admits that many applicants in the same circumstances as the author and from the same country are granted refugee status.

6.4 Regarding the request made to the Federal Court for judicial review, counsel explains that lodging such a request in no way guarantees success, as a very small percentage of such requests are granted. Moreover, even if in theory applicants have only to show that they have a "fairly arguable case", leave to appeal is granted in fewer and fewer cases. In principle, that makes the appeal procedure in question an illusion for the vast majority of refugees, including the author.

6.5 In any event, since the applicant was married, he had been advised to lodge a request for sponsorship on grounds of marriage, which in view of his circumstances had a good chance of success; but the request had not been successful.

6.6 Regarding the State party's claims that the author had an alleged right to appeal to the Federal Court, counsel states that in actual fact such appeals are non-existent, time-barred or totally ineffective and illusory, since they are inaccessible and discretionary and in no way prevent the Canadian Government from going ahead with the deportation of the author in any event.

6.7 Counsel points out that the Canadian Government is very well aware that access to such procedures is almost never granted in practice, and that in any event they do not prevent the Canadian Government from proceeding with the expulsion.

Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 In accordance with article 22, paragraph 5 (b) of the Convention, the Committee does not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been or would be unreasonably prolonged or that it is unlikely to bring effective relief to the alleged victim. In the present case, the author acknowledges that he has not pursued a request for judicial review by the Federal Court and has not lodged a request for a ministerial waiver on humanitarian grounds. Even if the author claims that these remedies would be illusory, he has furnished no evidence that they would be unlikely to succeed. The Committee notes that the conditions laid down in article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author of the communication and to the State party.

[Done in English, French, Spanish and Russian, the French text being the original version.]

2. Communication No. 45/1996

Submitted by:	D. (name deleted) (represented by AFIDRA)
Alleged victim:	The author
State party:	France
Date of communication:	13 December 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 1997,

Adopts the following decision:

Decision on admissibility

1. The author of the communication is D., a citizen of the Democratic Republic of the Congo (formerly Zaire), born on 25 May 1959, currently residing in France. He is represented by the Association pour la formation, l'insertion et le développement rural en Afrique (AFIDRA).

Facts submitted by the author

2. The Association states that D. is a member of the Union pour la démocratie et le Progrès Social and participated in activities for that party in Zaire, such as printing leaflets and posters. On 13 February 1990, he was arrested by the Division Spéciale Présidentielle (Special Presidential Division) on the grounds of a breach of public order. He was held for three months in prison without being tried or brought before a judge, and was subjected to ill-treatment by his prison warders. The author states that after his family intervened he was provisionally released on 20 May 1990 and told to report to the police once a month. However, in his request to the Office Francais de Protection des réfugiés et Apatrides (French Office for the Protection of Refugees and Stateless People) on 16 August 1990, D. stated that he had escaped from prison on 20 May 1990, and a "wanted" notice confirming this statement is enclosed by the author.

2.2 It is submitted that, following the massacres of students at Lubumbashi in May 1990, D. was again suspected of printing leaflets, and decided to leave the country with a false passport and visa. He entered France through Belgium on 1 August 1990.

2.3 On 16 August 1990, D. filed a request for refugee status, which was turned down by the Office Francais de Protection des Réfugiés et Apatrides on 24 August 1990, on the grounds that the alleged facts and risk of persecution were not sufficiently substantiated. His appeal was then rejected by the Commission de Recours des Réfugiés (Commission of Appeal in Refugee Matters) on 22 February 1991. As a result, his application for a residence permit was refused by the police authorities of Paris on 2 May 1991, and D. was ordered to leave France by 2 June 1991. Despite this, he apparently stayed in France.

2.4 On 15 July 1993, D. filed a further request on the grounds of his father's alleged murder in Zaire on 10 July 1993, which was rejected by the Office Francais des Réfugiés, et Apatrides. His appeal was again rejected on 17 December 1993 by Commission de Recours des Réfugiés, on the grounds that there were no new facts, since he had stated that the political situation in Zaire had not changed. It is submitted that D. was unable to file an appeal against this decision with the Conseil d'Etat, because he was not provided with legal aid.

2.5 Following an order of escort to the frontier (*arrêté de reconduite à la frontière*), D. was arrested in 1994 during an identity check and kept for 48 hours in custody and 6 days in detention. He then had to be released because there was no flight available for his deportation to Zaire. D. claims that he only heard of the order of escort to the frontier when he was already under arrest. In this connection, it is submitted that the order apparently had been sent by registered mail, and that the French post office does not hand over mail to foreigners without residence permits. It is further stated that no arrest warrant was shown to D., although he had requested it in order to appeal against his arrest. It is submitted that it was for that reason that D. was not able to appeal against the order of escort to the frontier or against his arrest.

The complaint

3. D. says that he fears for his life if forced to return to the Democratic Republic of the Congo.

State party's observations on the admissibility of the communication

4.1 By submission of 29 April 1997, the State party argues that the communication is inadmissible because domestic remedies had not been exhausted.

4.2 The State party explains that any foreigner whose appeal has been definitively rejected by the Commission de Recours des Réfugiés is requested to leave French territory within a month of being notified of the decision. The decision is notified by registered letter with acknowledgement of receipt delivered to the address given by the person concerned. If the person is not at home when the postal official delivers the letter, a notice is left at the address informing the person that the letter may be collected at the post office indicated on the notice. According to the State party, the postal administration, contrary to the author's allegations, usually hands over the letter if the recipient can show proof of identity, and is not responsible for judging the validity of the residence permit shown, with respect to its expiry. The summons to leave the territory states that the person concerned has 15 days to submit comments, especially regarding any risks he may be exposed to in the event of returning to his country of origin.

4.3 The State party argues that several appeal procedures were available to D., and that he did not use them. According to the State party, he was entitled to submit an application for judicial review to the Conseil d'Etat against the Commission's decisions of 28 February 1991 and 17 December 1993. Secondly, he could have requested the cancellation of the summons to leave French territory before the administrative court.

4.4 Lastly, the State party points out that D. did not appeal against the order of escort to the frontier dated 25 November 1991. The State party says that the law allows a specific appeal against orders of escort to the frontier to be lodged before the judge for escort to the frontier of the administrative court with territorial jurisdiction. Such appeal must be lodged within 24 hours of the order being notified. On hearing the appeal, the judge has 48 hours to issue a ruling, during which time proceedings are suspended. When the appeal has been submitted, the judge must, where appropriate, entertain the complaint that the person concerned runs the risk of being subjected to torture or to inhuman and degrading treatment in the event of a return to the country of origin, in conformity either with international rules, or with rules of domestic law.

The author's comments

5.1 In his comments on the State party's observations, the author alleges that many post offices will not hand over registered mail to persons without a residence permit who show only a passport or a residence permit which has expired, even though they have no legal authority to decide whether a residence permit is valid or not. According to the author, some post offices even go so far as to call the police if a foreigner appears without a residence permit.

5.2 As for the appeal for judicial review, the author explains that this appeal is admissible only on legal grounds, and must be submitted by a lawyer. The author also maintains that decisions of the Conseil d'Etat suffer considerable delays and do not have the effect of suspending proceedings.

5.3 With regard to the order of escort to the frontier, the author claims that he never received the summons and was first acquainted with it only when questioned by police. He claims that by the time he had been informed by the police, it was too late to appeal, since appeals have to be lodged within 24 hours of notification.

Issues and proceedings before the Committee

6.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted. That rule does not apply, however, if it is established that remedies have been or might be unreasonably prolonged or that they are unlikely to bring effective relief to the alleged victim. In the present case, the author acknowledged that he had not exhausted all available remedies provided for under French law – before the Conseil d'Etat against the decision of the Commission de Recours des Réfugiés, before the administrative court against the order to leave the territory, or before the administrative tribunal against the order of escort to the frontier. The reasons given by the author do not show that such appeals were unlikely to succeed. The Committee therefore finds that the conditions stipulated in article 22, paragraph 5 (b), of the Convention have not been met.

7. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be notified to the author of the communication and to the State party.

[Done in French (original version), and translated into English, Spanish and Russian.]

3. Communication No. 47/1996

Submitted by:	V. V. (name withheld) (represented by counsel)
Alleged victim:	The author
State Party:	Canada
Date of communication:	15 March 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 1998,

Adopts the following:

Decision on admissibility

1. The author of the communication is V. V., a Sri Lankan citizen of Tamil origin currently residing in Canada, where he has applied for refugee status and is at risk of expulsion. He alleges that his expulsion would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The facts as submitted by the author

2.1 The author states that in July 1983 he was living with his father, brother and sister at Vauvniya and that, after a series of intercommunity riots, he was forced to seek refuge in a camp, where he remained for three months. In 1990 the village was bombed and his father lost an eye. In August 1990, members of the Liberation Tigers of Tamil Eelam (LTTE) stole his father's van and used it to attack a bank. The author was then arrested by the military and taken to the military camp at Vauvniya, where he was interrogated, beaten and tortured. The author states that he was struck with nail-studded planks, held close to a flame, kicked with metal-toed boots and threatened with the "barbed wire treatment". After 25 days he managed to bribe someone and return to his father's home. Also in August 1990, Tamil fighters came to his family's home and demanded money, which the family paid. The soldiers returned for more money in December 1990 and again in March 1991.

2.2 In August 1991, the author opened a business together with an associate whose sister was the minister of education and whose brother was a police inspector. The author says that this caused him problems because "it was thought that [he] supported the Government". In 1992, his associate's brother-in-law and brother were killed by the LTTE. The author then decided to move to Colombo. He adds that, because of the riots and violence taking place at the time, he had to close his business.

2.3 In Colombo, both the LTTE and the Eelam People's Democratic Party (EPDP) demanded protection money from him. The author did not feel safe and decided to pay someone to help him leave the country.

2.4 The author arrived in Canada on 17 November 1992 from the United States of America and applied for refugee status the same day. On 16 July 1993, the Immigration and Refugee Board rejected his application on the ground that his story was inconsistent and that he had provided no evidence to justify his fears of persecution. On 10 March 1994, the author's request for leave to appeal the Board's decision was rejected by the Federal Court. On 29 November 1995 the application he had submitted on the basis of a subsequent risk evaluation procedure was rejected. The official responsible for the evaluation found, *inter alia*, that the author had not been harassed by the police when he had informed them that he was living in Colombo, that the greatest risk of imprisonment was run by young Tamils whereas the author was 46, and that the Office of the United Nations High Commissioner for Refugees (UNHCR) had standardized its approach and was no longer requesting that, as a precautionary measure, rejected Tamil asylum seekers only be sent back to Sri Lanka if they had family or friends in Colombo.

2.5 In January 1996, the author applied for a residence permit on humanitarian grounds; the immigration authorities rejected the request. The author states that he has exhausted all domestic remedies.

The complaint

3.1 The author states that he fears for his life if he returns to his country. He argues that, in view of the extensive military operations being conducted by the Government in his region of origin, it is impossible for him to return there, and that in Colombo all Tamils are looked on with suspicion because of the suicide bombings. According to the author, numerous Tamils have been arrested following these bombings and some have been tortured. The author also states that his family has been subjected to violence in Sri Lanka. He points out that he has already been arrested once and tortured and submits a medical certificate dated 20 March 1996 indicating that he has a lump on his forehead, a scar from an old burn on his left forearm and a scar on his right leg.

3.2 The author asks the Committee to request Canada not to send him back to Sri Lanka. He argues that there is a consistent pattern of gross, flagrant or mass violations of human rights in Sri Lanka.

3.3 Finally, the author states that he is fully integrated into Canadian society, that several members of his family reside in Canada, that he has found a job and that his employer is supportive of his attempts to remain in Canada.

State party's observations on the admissibility of the communication

4. On 4 December 1996, the Committee, through its Special Rapporteur, sent the communication to the State party for comments and requested it not to expel the author while his communication was under consideration by the Committee.

5.1 In a reply dated 25 March 1997, the State party challenges the admissibility of the communication.

5.2 The State party notes that the author left his country on 30 October 1992 and arrived in Canada on or about 15 November 1992. He claimed refugee status the same day. On 20 July 1993, the competent court, the Refugee Determination Division of the Immigration and Refugee Board, rejected the author's claim for lack of credibility. The Federal Court of Canada denied his request for leave to apply for judicial review of the Refugee Division's decision.

5.3 An official of the Ministry of Citizenship and Immigration evaluated whether the author's expulsion would expose him personally to torture or cruel, inhuman or degrading treatment. The author did not ask the Federal Court to review the decision. The author also invoked paragraph 114 (2) of the Immigration Act and asked to be exempted on humanitarian grounds from the provisions of the Immigration Act and to be allowed to apply for permanent residence in Canada. On 8 and 30 January 1996, on inspection of the file, it was concluded that the author had not established humanitarian grounds for exemption from the provisions of the Immigration Act. The author did not ask the Federal Court to review those decisions. On 2 April 1996, he was expelled to the United States.

5.4 The State party points out that the Committee's communication was sent to it on 4 December 1996, several months after the author's expulsion.

5.5 On 3 July 1996, the author returned to Canada from the United States and again filed a claim to refugee status. The new claim began a completely new process identical to the one followed for the first claim. Thus, a conditional residence prohibition was issued against the author on 3 July 1996 and his claim was referred to the Refugee Determination Division for consideration on the merits. The expulsion order will not be carried out unless and until the Refugee Division hands down a negative decision on the claim to refugee status.

5.6 The author's communication is aimed at preventing him from being sent back to Sri Lanka in accordance with the expulsion order handed down against him on 28 December 1992, which became enforceable on 29 November 1995. The author was expelled from Canada on 2 April 1996. His communication is therefore completely unwarranted and should be declared inadmissible.

5.7 In addition, a new situation was created by the author's second claim to refugee status; this situation is totally different from the one which gave rise to the communication, and is not covered in the communication.

5.8 Against the possibility that, despite the fact that the grounds for it no longer exist, the Committee wishes to study the process followed for the author's first claim to refugee status and the decisions taken at that time, the State party maintains that the author failed to exhaust domestic remedies in connection with at least three decisions readied under the Immigration Act, namely the decision that no risk was involved in his return and the findings that there were no humanitarian grounds for exemption from the Immigration Act.

5.9 The purpose of article 3 of the Convention against Torture is not to prohibit all expulsions, returns or extraditions but rather to prohibit expulsion, return or extradition to a country where there are substantial grounds for believing that the person might be subjected to torture.

5.10 In the case at hand, the facts have demonstrated the communication's lack of merit: contrary to the fear he alleges in his communication, the author was not sent back to Sri Lanka, but to the United States, the country from which he had entered Canada.

5.11 The State party maintains that even if the Committee concludes that it is able to consider the situation subsequent to the author's expulsion to the United States, the communication should still be considered inadmissible because the author has not established a minimum of support for his communication. He is currently at no risk of expulsion from Canada as his claim to refugee status is pending before the appropriate court.

5.12 In addition, the country to which he would be sent if expelled has not yet been determined. As indicated by his 2 April 1996 expulsion and consistent with the agreement with the American authorities, if expelled the author would most probably be sent to the United States since he entered Canada from that country.

5.13 The Committee against Torture has made it quite clear that an author must establish, at the very least prima facie at the admissibility stage, that he is personally at risk of being tortured. Recent evidence does not support the statements to the effect that the Tamils are in danger in Colombo. According to a UNHCR document dated 9 September 1996, torture and other forms of ill-treatment are not practised by the police and authorities in Colombo.

5.14 The Canadian Government maintains that the author of the communication has not established prima facie either that he risks being returned to Sri Lanka or that he would be personally at risk of being tortured if he were returned there.

5.15 The consideration of the second claim to refugee status is still pending. Should the decision on that claim be negative, the author could ask to be included in the category of "asylum seekers without recognized refugee status", as a person at risk of being tortured or subjected to inhuman or degrading treatment in the country to which he would return.

5.16 The author can also repeat his request under paragraph 114 (2) of the Immigration Act to be exempted, on humanitarian grounds, from the provisions of the Act and to be allowed to file an application for permanent residence in Canada.

5.17 Should the decision on the claim to refugee status be negative, a request could be made for leave to apply to the Federal Court for judicial review. The same is true of the decision concerning the "asylum seekers without recognized refugee status" category and the decision concerning exemption from the provisions of the Act on humanitarian grounds.

Comments by the author

6.1 In a letter dated 15 May 1997, the author states that he has been a victim of torture, as confirmed in the report of a Canadian doctor belonging to the *Réseau d'intervention auprès des personnes ayant subi la violence organisée* (RIVO) (Intervention network for victims of organized violence), which has been submitted to the Committee.

6.2 A treaty between Canada and the United States for monitoring asylum seekers and immigrants, which will probably be signed this year, will end the possibility of being sent back to the United States after being refused asylum in Canada. Persons claiming asylum in Canada whose applications have been rejected will no longer be entitled to travel to the United States to file their claims and vice versa. The two countries will exchange information and block access to their territory by claimants who have been rejected by the other partner to this agreement.

6.3 The second claim has virtually no chance of succeeding, as the usual practice is for the Immigration Board's decision to be based almost entirely on the first negative decision and the stenographic notes of the first testimony.

6.4 Regarding the State party's assertion that the claimant has a remedy available for the risk of return before he is expelled a second time, it should be noted that only 3 per cent of the applications filed under this procedure are currently being accepted.

6.5 Concerning exhaustion of domestic remedies, the author appealed the rejection of his claim by filing an application for review with Federal Court; the application was rejected. The so-called "risk of return" procedure was then begun. The application was, however, rejected, on the ground that the author could take refuge in Colombo. That was a senseless argument, since Colombo had been the target of terrorist attacks for over a year.

6.6 At that point ordinary remedies had been concluded. The author again applied to the Ministry of Immigration for a residence permit on humanitarian grounds, which is a special and costly remedy. He received a negative decision within 24 hours, which casts some doubt on the fairness of the procedure.

6.7 The immigration officials told counsel that she could make representations to an adjudicator prior to the author's expulsion. On the day of the hearing, however, counsel learned that the author had been expelled two days earlier.

6.8 In the author's opinion, his application to the Committee concerns his past, present and future situation as long as the risk of being sent back to Sri Lanka persists. He has therefore asked the Committee to suspend consideration of his case pending the decision on his new application for asylum.

Issues and proceedings before the Committee

7.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

7.2 In contrast to the State party's opinion, the Committee is of the view that the author's communication also concerns the second claim to refugee status, for its purpose is identical to that of the first claim.

7.3 Article 22, paragraph 5 (b), of the Convention provides that the Committee shall not consider any communication unless it has ascertained that all available domestic remedies have been exhausted; this shall not be the rule if it is established that the application of remedies has been or would be unreasonably prolonged or would be unlikely to bring the alleged victim effective relief. In the present case the author has claimed refugee status, but the Refugee Division of the Immigration and Refugee Board has not yet taken a decision on his case. The author has not said that this delay in the decision is unreasonable. Other remedies will still be available when the decision has been handed down. In these circumstances the Committee finds that the conditions laid down in article 22, paragraph 5 (b), of the Convention have not been met.

8. Accordingly, the Committee against Torture decides:

(a) That the communication as it stands is inadmissible;

(b) That pursuant to rule 109 of its rules of procedure, this decision may be reviewed by the Committee upon a written request containing documentary evidence to the effect that the reasons for inadmissibility are no longer valid;

(c) That this decision shall be communicated to the author and to the State party.

[Done in English, French, Russian and Spanish, the French text being the original version.]

4. Communication No. 48/1996

Submitted by:	H. W. A. (represented by counsel)
Alleged victim:	The author
State party:	Switzerland
Date of communication:	4 April 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 May 1998,

Adopts the following:

Decision on admissibility

1. The author of the communication is H. W. A., alias N. B. M., alias H. A., a Syrian citizen. He claims that his forced return to the Syrian Arab Republic would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel.

2.1 The author claims that he left his country at the age of 13 to join the Palestine Liberation Organization (PLO) in Lebanon. In 1984, he was sent by the PLO for special military training to Iraq, where he stayed until 1988. Thereafter he was sent to Libya. Seeing this assignment as a demotion, he left the PLO. He was subsequently enlisted for a special mission, namely an attack on a hotel in Taba (Egypt) used by Israeli soldiers. After starting out on his mission, he decided to abandon it for safety reasons. Fearing reprisals in the Libyan Arab Jamahiriya because of his defection, he decided to seek refuge in Europe.

2.2 Before entering Switzerland, the author entered France, where he requested asylum under a false name. Following the rejection of that request in March 1990, he applied for asylum in Switzerland under his real name on 20 May 1990. The Federal Refugee Office (Office fédéral des réfugiés, ODR) rejected that request on 19 January 1993, and the Swiss Asylum Appeal Board (Commission suisse de recours en matière d'asile, CRA) rejected his appeal on 15 February 1995. His application for review was rejected on 26 January 1996.

3.1 By a letter dated 17 May 1996, the Committee transmitted the communication to the State Party for its comments on its admissibility.

3.2 It appears from a letter from the author dated 22 October 1996 that he is now living in Ireland, where he has filed a request for asylum.

3.3 By a letter dated 17 April 1998, the State party requested the Committee to declare the communication inadmissible on the ground that it had become irrelevant. The State party observed that, after being informed of the deposit of the communication with the Committee, ODR decided on 10 May 1996 not to expel the author from Switzerland. The author nonetheless left Switzerland, arriving on 3 July 1996 in Ireland and filing an application for asylum there. Furthermore, he has authorized the Irish authorities to contact the competent Swiss authorities to obtain from them documents he needs in connection with the new asylum proceedings. The State party argues that it can therefore be considered that it is in Ireland that the author now wishes to obtain asylum.

3.4 Given that the author left Switzerland nearly two years ago and has since been involved in formalities aimed at obtaining asylum in another country, the State party believes that the question of incompatibility of the ODR decision of 19 January 1993 to expel the author from Switzerland with article 3 of the Convention is of no practical or topical interest.

3.5 In his comments of 8 May 1998, the author's Swiss counsel points out that, although the author was indeed informed that ODR authorized him to remain in Switzerland, the formal notification of the decision indicated that the authorization was valid only until 30 June 1996. He explains that, in view of the absence of any request pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the author panicked and left Switzerland. The author had alleged that the cantonal police had orally warned him that, unless he left Switzerland within two weeks, they would take him to the Consulate General of the Syrian Arab Republic.

3.6 The counsel's view is that, since the author could not legally have remained in Switzerland to await the outcome of the proceedings before the Committee, the State Party cannot reasonably maintain that those proceedings have become irrelevant because the author filed an application for asylum in Ireland in July 1996. The counsel observes that that application is still pending and that the question of the incompatibility of the author's forced return with article 3 of the Convention is therefore very definitely of practical and topical interest. He states that, because of an article in the press, the author no longer feels safe in Dublin and would like to return to Switzerland.

Issues and proceedings before the Committee

4.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

4.2 Pursuant to article 22, paragraph 1, of the Convention, the Committee may consider a communication from an individual who claims to be a victim of a State party's violation of a provision of the Convention, providing the individual is subject to that State's jurisdiction and the State has declared that it recognizes the Committee's competence under article 22.

4.3 The Committee notes that the author is no longer in Switzerland and that he has applied for asylum in Ireland, where has been given a residence permit pending the outcome of the asylum proceedings. Article 3 of the Convention prohibits return (*refoulement*) of a person by a State party to another State where there are substantial grounds for believing that the individual may be subjected to torture. In the case in question, the author, being legally present in the territory of another State, cannot be returned by Switzerland; consequently, article 3 of the Convention does not apply. Consideration of the communication having become irrelevant, the Committee finds the communication inadmissible.

5. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the applicant's counsel and to the State party.

[Done in French (original version) and translated into English, Russian and Spanish.]

5. Communication No. 52/1996

Submitted by:	R. (name withheld)
Alleged victim:	The author
State party:	France
Date of communication:	20 June 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 1997,

Adopts the following decision:

Decision on admissibility

1. The author of the communication is R., an Algerian citizen currently residing in France and threatened with deportation. The author claims that his deportation from France would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Summary of the facts as submitted by the author

2.1 The author states that he became a member of the Front Islamique du Salut (FIS) in Algeria in February 1988. He was first arrested in October 1988 for participating in a demonstration organized in Sidi-Bel Abbes. He allegedly broke into a Monoprix store and threw a Molotov cocktail into the officers' residence. He was found guilty and sentenced to six months' imprisonment and to pay 2,000 Algerian dinars in damages. When freed from prison, he was dismissed by his employer. After that he devoted himself to his political activities for the FIS.

2.2 In June 1989, he was arrested again because he was distributing propaganda flyers for the FIS. He was sentenced to two months' imprisonment.

2.3 In November 1990, he was arrested for the third time and held in detention for an unspecified period. He was allegedly subjected to torture on the orders of the superintendent of police, and forced into painful positions, such as having his hands tied behind his legs and being hung up with a rag in his mouth. When released, he was sent to the hospital by the police, who claimed that he had attempted suicide.[a] The author also states that abrasions from the torture are still visible, in particular scars around his ankles.[b]

2.4 In March 1992, the author and two other members of the FIS were arrested. He claims that he was falsely accused of an attack on a hotel in December 1990. He does not say what sentence he received after being found guilty. After two months' detention, he went on a hunger strike to assert his claim of innocence. After another month he was granted bail under judicial supervision *(mise en liberté provisoire sous contrôle judiciaire)* for health reasons. In June 1992, while on bail, he left Algeria and fled to France.

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[a] Two medical certificates, dated 14 November 1990 and 2 September 1993, and one admission certificate dated 8 August 1993 attest that R. was hospitalized from 4 to 13 November 1990.

[b] A medical certificate dated 18 January 1993 attests that the marks found on the author's body are compatible with the torture he describes.

2.5 In France, after his request for asylum was rejected, the author requested a residence permit, which was refused him by the prefect of the Val d'Oise on 12 August 1993. His appeal was also rejected.

2.6 In November 1993, a deportation order was issued against him. His appeal was rejected by the Tribunal Administratif de Versailles.

The complaint

3. The author argues that if he returns to Algeria he will be arrested and tortured again because of his participation in the political activities of the FIS. He states that if France goes ahead with the deportation order, it will be violating article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Comments of the State party on the admissibility of the communication

4. On 25 September 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments, requesting it not to expel the author while his communication was under consideration by the Committee.

5.1 In a reply dated 9 December 1996, the State party challenges the admissibility of the complaint.

5.2 The State party recalls that the author entered French territory on 15 June 1992 and filed a request for asylum on 11 August 1992. His request was rejected on 30 September by the Office Français de Protection des Réfugiés et Apatrides (OFPRA) on the grounds that the cursory and muddled explanations of the author, and their lack of credibility, make it impossible to determine the reality of his political commitment and the extent to which his fears of persecution by the Algerian authorities are justified. On 29 June 1993, the Refugee Board (Commission de recours des réfugiés) confirmed that decision.

5.3 On 12 August 1993, the author received a formal request to leave French territory. As he failed to comply within the specified time limit, a deportation order was issued against him by the prefect of the Val d'Oise on 25 November 1993. The author appealed against that order to the Tribunal Administratif de Versailles. The Tribunal rejected his appeal on 26 November 1993 as inadmissible on the grounds of failure to provide a statement of facts and arguments.

5.4 The State party notes that the author requested a residence permit, which was refused him by the prefect of the Val d'Oise on 12 August 1993. His appeal against that decision was turned down by the Minister of the Interior on 30 August 1993. On 13 June 1995, the Tribunal rejected the author's appeal against the Minister's decision. On 10 November 1995, the author was appealing against that latest decision before the Conseil d'Etat.

5.5 The State party maintains that domestic remedies have not been exhausted. According to the State party, the author could ask the administrative court for an annulment of the request to leave French territory, which he has not done. The State party also points out that the Conseil d'Etat has yet to rule on the author's appeal against the refusal to grant him a residence permit.

5.6 Lastly, the State party stresses that the author has not exhausted available remedies against the deportation order. It observes that his request to the Tribunal Administratif de Versailles was rejected because it was inadmissible owing to its lack of substantiation. The State party maintains that, owing to the subsidiary nature of appeal to international bodies, settled judicial practice dictates that domestic judicial remedies are not exhausted simply by being invoked; the matter must also have been referred to the national authorities in the proper manner. Citing the judicial practice of the European Commission, the State party asserts, accordingly, that the author of a communication whose application for domestic remedy has been declared inadmissible because of its failure to meet the requirements of national law, particularly as to form and time limit, has not exhausted domestic judicial remedies. As in this case the author has not brought the matter to court in the manner required, the State party maintains that he has therefore not made good the claim of a violation of article 3 of the Convention, which would have been an entirely effective recourse.

5.7 The State party observes that an appeal against a deportation order is particularly effective, since it results in the suspension of the administrative decision for deportation and since the court must give a ruling within 48 hours of the matter being referred to it.

Comments of the author

6.1 In a letter dated 10 February 1997, the author asserts that the Tribunal Administratif de Versailles did not take account, in its decision of 13 June 1995 to refuse him a residence permit, of the documents submitted to it as supporting evidence of his integration into French society. He adds that he did not receive a summons to appear in court to hear the decision.

6.2 The author maintains that his lawyer filed an appeal against the request to leave French territory of 12 August 1993, and that it was rejected.

6.3 The author explains that he was never informed of the many judicial remedies available to him. He therefore did not know he could ask the administrative court for an annulment of the request to leave French territory.

6.4 He points out that the proceedings before the Conseil d'Etat will probably take three years and that he cannot wait for its reply.

6.5 The author submits supporting documents to substantiate his integration into French society.

Considerations of the Committee

7.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 Pursuant to article 22, paragraph 5 (b), of the Convention the Committee is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim. In the case under consideration, the author has not asked the administrative judge for an annulment of the request to leave French territory; he has not completed his appeal against the deportation order before the Tribunal Administratif de Versailles; and the rejection of his request for a residence permit is under appeal before the Conseil d'Etat. The author has not presented any reasons for believing that these appeals have little chance of success. The Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee therefore decides:

(a) That the communication as it stands is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Adopted in English, French, Russian and Spanish, the French text being the original version.]

6. Communication No. 58/1996

Submitted by:	J. M. U. M. (name withheld) (represented by counsel)
Alleged victim:	The author
State party:	Sweden
Date of communication:	27 June 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 1998,

Adopts the following:

Decision on admissibility

1. The author of the communication is J. M .U. M., born on 11 June 1956. He is a national of the Democratic Republic of the Congo (formerly Zaire) and alleges a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

The facts

2.1 The author left Zaire in June 1990, after having experienced arrest and detention because of his political activities for the Mouvement National Congolaise Lumumba (MNCL). He was given a temporary residence permit in Congo, but left the country because he felt unsafe. He entered Sweden on 14 December 1990 and applied for asylum.

2.2 On 20 January 1992, the Immigration Board rejected his request. The Aliens Appeals Board rejected his appeal on 3 December 1993. New applications made by the author to the Aliens Appeals Board were likewise rejected. The expulsion order against the order was not enforced because he went into hiding.

2.3 On 27 June 1996, the author presented a communication to the Committee against Torture under article 22 of the Convention. The Committee, through its Special Rapporteur for New Communications, requested the State party on 4 December 1996 not to deport the author while his communication was under consideration.

2.4 On 13 June 1997, the author filed a new application with the Aliens Appeals Board, based on new circumstances in his country of origin, after the Government had been overthrown. The expulsion order against the author was suspended.

2.5 On 27 December 1997, the Aliens Appeals Board concluded that the limitation period of the decision on refusal of entry in the author's case, which had gained legal force on 3 December 1993, had expired and that the decision had become statute barred. The Appeal Board referred the case back to the Immigration Board. On 27 January 1998, the author filed a new application for a residence permit with the National Immigration Board. According to information provided by the State party, the examination of his request shall be carried out as if the request had been made for the first time and the forthcoming decision by the Immigration Board would be subject to appeal to the Aliens Appeals Board.

Issues and proceedings before the Committee

3.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

3.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted. In the instant case, the original expulsion order against the author is no longer enforceable and the author is not under immediate threat of being expelled to a country where he would risk to be subjected to torture. The author has presented a new application for a residence permit to the Immigration Board, from which a further appeal would be possible to the Aliens Appeals Board, if necessary. There is nothing to indicate that this new procedure cannot bring effective relief to the author. The Committee is therefore of the opinion that the communication is at present inadmissible for failure to exhaust domestic remedies.

4. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the author and his representative.

[Done in English, French, Russian and Spanish, the English text being the original version.]

7. Communication No. 64/1997

Submitted by:	L. M. V. R. G. and M. A. B. C. (represented by counsel)
Alleged victim:	The authors
State party:	Sweden
Date of communication:	14 October 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 November 1997,

Adopts the following:

Decision on admissibility

1. The authors of the communication are L. M. V. R. G. and M. A. B. C., Peruvian citizens currently living in Sweden. They claim that their forced return to Peru would violate article 3 of the Convention. They are represented by counsel.

2.1 The authors claim to have been politically active in Peru both in the labour movement and in the political opposition. Both state that they have been arrested, detained and tortured in Peru and that they fear to be tortured again if they return.

2.2 The authors arrived in Sweden on 19 July 1990 and 17 December 1991, respectively. R. G.'s application for refugee status was rejected by the National Immigration Board on 30 November 1992, and her appeal was rejected on 21 July 1994. B. C.'s application for refugee status was rejected on 22 March 1992 and his appeal was denied on 21 July 1994.

2.3 The author's daughter was born on 19 December 1993, and their son on 26 November 1995. Medical evidence in the file shows that R. G. suffers from post-traumatic stress disorder and that this strongly affects the life of the family.

3.1 The authors' communication was transmitted to the State party on 5 February 1997. The State party was requested not to expel the authors while their communication was under examination by the Committee.

3.2 In its submission of 27 June 1997, the State party has indicated that the authors have submitted a new application to the Aliens Appeals Board and have requested a residence permit for humanitarian reasons, based on R. G.'s present health condition and the family's situation in general. Counsel for the authors has not contested that this application is still pending.

4.1 Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

4.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The Committee considers that, even if the authors' new application is not based on fear of torture but on humanitarian grounds, it is an effective remedy, since the Aliens Appeals Board has the competence to grant the authors a residence permit. In this context, the Committee notes that it is not for the Committee to review the grounds on the basis of which a person is allowed to stay in a country, as long as the State party fulfils its obligations under article 3 of the Convention.

5. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the authors containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the authors and to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Annex XI

Amended rules of procedure

Solemn declaration

Rule 14

Before assuming his duties after his first election, each member of the Committee shall make the following solemn declaration in open Committee:

> "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee against Torture honourably, faithfully, impartially and conscientiously."

Acting Chairman

Rule 18

1. If during a session the Chairman is unable to be present at a meeting or any part thereof, he shall designate one of the Vice-Chairmen to act in his place.

2. In the event of the absence or temporary disability of the Chairman, one of the Vice-Chairmen shall serve as Chairman, in the order of precedence determined by their seniority as members of the Committee; where they have the same seniority, the order of seniority in age shall be followed.

3. If the Chairman ceases to be a member of the Committee in the period between sessions or is in any of the situations referred to in rule 20, the Acting Chairman shall exercise this function until the beginning of the next ordinary or special session.

Establishment of an inquiry

Rule 78

1. The Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to it within a time limit which may be set by the Committee.

2. When the Committee decides to make an inquiry in accordance with paragraph 1 of this rule, it shall establish the modalities of the inquiry as it deems it appropriate.

3. The members designated by the Committee for the confidential inquiry shall determine their own methods of work in conformity with the provisions of the Convention and the rules of procedure of the Committee.

4. While the confidential inquiry is in progress, the Committee may defer the consideration of any report the State party may have submitted during this period in accordance with article 19, paragraph 1, of the Convention.

Annex XII

List of documents for general distribution issued for the Committee during the reporting period

A. Nineteenth session

Symbol	*Title*
CAT/C/25/Add.10	Second periodic report of Portugal
CAT/C/32/Add.2	Initial report of Cuba
CAT/C/33/Add.1	Second periodic report of Cyprus
CAT/C/34/Add.5	Third periodic report of Argentina
CAT/C/34/Add.6	Third periodic report of Switzerland
CAT/C/34/Add.7	Third periodic report of Spain
CAT/C/41	Provisional agenda and annotations
CAT/C/SR.299-317/Add.1	Summary records of the nineteenth session of the Committee

B. Twentieth session

Symbol	*Title*
CAT/C/2/Rev.5	Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations, declarations and objections under the Convention
CAT/C/17/Add.18	Second periodic report of France
CAT/C/20/Add.6	Second periodic report of Peru
CAT/C/28/Add.3	Initial report of Sri Lanka
CAT/C/29/Add.2	Second periodic report of Germany
CAT/C/29/Add.3	Second periodic report of Guatemala
CAT/C/29/Add.4	Second periodic report of New Zealand
CAT/C/33/Add.3	Second periodic report of Israel
CAT/C/34/Add.8	Third periodic report of Norway
CAT/C/34/Add.9	Third periodic report of Panama
CAT/C/37/Add.1	Initial report of Kuwait
CAT/C/42	Note by the Secretary-General listing initial reports due in 1998
CAT/C/43	Note by the Secretary-General listing second periodic reports due in 1998
CAT/C/44	Note by the Secretary-General listing third periodic reports due in 1998
CAT/C/45	Provisional agenda and annotations
CAT/C/SR.318-344	Summary records of the twentieth session of the Committee